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Federal Building, St. Paul, Minn., September 17, 1909.

Pursuant to agreement of parties as to continuances, the hearing was resumed at 10 o'clock A. M.

ALBERT H. HOGELAND,

recalled on behalf of Complainants, testified:

By Mr. HOLDEN:

Q. Mr. Hogeland, you have already been on the stand and testified in the cases of Kennedy and James against the Great Northern Railway and others?

A. Yes, sir.

Q. You have also read over, I take it, the testimony given by Mr. Morgan in those cases some weeks ago?

A. I have.

Q. There are several points which Mr. Morgan touched upon to which I would like to direct your attention. On the subject of the classification of grading, will you state into what classes of material the Railway estimate on the subject of grading was divided?

A. It was divided into earth, hard-pan, loose rock and solid rock.

The MASTER: Following the division in the Northern Pacific case, then?

Mr. HOLDEN: So I understand.

WITNESS: I think so, except I am not sure that they used hard-pan.

Mr. HOW: They did not use hard-pan in the state of Minnesota, as I remember it.

Q. The Northern Pacific estimate, as I understand it without being clear on the subject, was largely made up from profile estimates, was it not?

A. Yes, sir; that is my understanding.

Q. And to that extent the method of procedure was differ-

ent than that used by you for the quantities in the Great Northern case?

A. Yes, sir.

Q. Your Ex. No. 3 (I think it is) shows the sources of the grading quantities for the Minnesota lines of the Great Northern?

A. It does.

Q. And the percentages of the different sources from which the quantities were derived, and are fully covered in your original testimony?

A. Yes, sir.

Q. Now, your division as you say, was into earth, hard-pan, loose rock and solid rock; why did you follow that division?

A. Because that is the way practically all of the work of grading on the Great Northern had been carried out in Minnesota and it is our present method of estimating earth work to contractors.

Q. That is the basis upon which the specifications are made under which your grading work has always been done, is it not?

A. Nearly always.

Q. And in every substantial sense it is the basis on which your present work is being done?

A. Yes, sir; it is.

Q. Now, the estimate made by Mr. Morgan does not include anything for hard-pan, as you understand it; is that true?

A. He has not made a separate classification of hard-pan.

Q. Now, will you state, in arriving at the quantities of hard-pan, loose rock and solid rock, how you have been guided?

A. I have been guided by the amounts of such materials handled on the original construction, as shown on contractors' final estimates, as well as by my knowledge of each line and the kind of materials in the excavation.

Q. On page 1444 (transcript) of Mr. Morgan's testimony, he stated something to the effect that a very large percentage

of the material used for all grading work done since original construction comes from gravel pits. Do you agree with that statement?

A. No, I cannot agree with that statement.

Q. Now, will you give your reasons why?

A. Because the work which is done since construction, in the way of widening cuts, widening banks, reduction of grades, grading for new side tracks or for double track, comes very largely from the original excavations of the railroad, in the way of widening and deepening such excavations. Of the twenty million yards of grading done since original construction on the lines in Minnesota, at least 90 per cent has come from deepening and widening the original excavation and not from gravel pits.

Mr. HOW: You mean on the Great Northern System?

WITNESS: In Minnesota.

Mr. HOW: Yes, on the Great Northern in Minnesota?

WITNESS: Yes, sir.

Q. Now, I wish you would proceed, in your own way, to state what considerations you have in mind bearing upon Mr. Morgan's analysis of conditions in Minnesota relating to hard-pan.

A. All classified material, hard-pan, loose rock and solid rock, come from the excavation. It necessarily follows that there must be an increase in those materials by reason of the extra work done since original construction. It is my opinion that the percentage of hard-pan in such extra work is generally much greater for such extra work than it was on the original construction. Take the line from East St. Cloud to Barnesville, as stated by Mr. Morgan. On the original construction, the hard-pan amounted to about two per cent of the total grading quantities, and we now show it about ten per cent. The grade line on this original construction was laid so as to make light cuts and fills, the rate of grade used being a maximum of

one and one-half per cent. Since the original construction the grade has been reduced to six-tenths of one per cent. A large amount of curvature has been taken out, making long, deep cuts and high fills, and such cuts have been made wide for better drainage. It is a well-known fact that the deeper the excavation the harder the material becomes, as a rule; so that it is entirely reasonable to expect a much larger percentage of hard-pan in deep cuts than in shallow cuts. Furthermore, on such a line as Willmar to Jasper, where the hard-pan on the original construction was about 4 per cent of the total grading quantities and we now show it about 12½ per cent, the original quantities were more than half from side-borrows where no hard-pan is allowed.

Q. Well, just explain what you mean by that.

A. When an embankment is made from side-borrow and not by hauling out from excavation, the material is the top soil. If any hard-pan shows up very close to the surface, the borrow-pits are made wider so as not to be obliged to use classified material such as hard-pan, loose rock or solid rock, in making such embankment.

Q. You say in the original gradiing of this line from Willmar to Jasper, more than half of the original grading quantities were taken from borrow-pits on the side?

A. From the side-borrows.

Q. And therefore there was no hard-pan to be allowed for. Now, then, proceed, if you will.

A. That is, the hard-pan on the original construction of this Willmar to Jasper line was much more than four per cent of the material taken from cuts; as a matter of fact it was about 10 per cent. Taking into consideration the location and the manner in which the greater part of the material used in carrying out extra work is done since construction, it is entirely reasonable to expect a far larger percentage of the hard-pan than in the original construction quantities.

Q. Now, what have you to say on the subject of loose rock and solid rock?

A. In regard to loose rock and solid rock such an increase has been made over the original construction quantities as seemed reasonable to me would be necessary to carry out the extra work done since construction. In regard to these classified materials, hard-pan, loose rock and solid rock, Mr. Morgan's estimate seems to me very unfair. As stated before, no hard-pan at all has been allowed. In several instances the loose rock and solid rock allowed by him are less than returned on the original construction.

Q. And by that you mean as shown on your records?

A. Shown as paid to contractors, to say nothing about the work which has been done since construction.

Q. Can you give some illustrations of cases where the amount he has allowed is less than the amount shown on your records on original construction?

A. On Section 7, Willmar to Jasper, the State's estimate allows 1503 cubic yards of loose rock and 6112 cubic yards of solid rock. On the original construction there were 3258 cubic yards of loose rock and 6400 cubic yards of solid rock, and there has been a large amount of loose rock and solid rock moved on this line since construction.

On Section 36, Cloquet to Deer River, the State's estimate allows 8112 cubic yards of loose rock and 3597 cubic yards of solid rock. We have actual record of rock work on this line amounting to 14,744 cubic yards of loose rock and 43,069 cubic yards of solid rock.

On Section 39, Chisholm to Virginia, the State's estimate allows 21,080 cubic yards of loose rock and 15 825 cubic yards of solid rock. We have actual record of 34,950 cubic yards of loose rock and 16,431 cubic yards of solid rock.

Section 41, Kelly Lake to Nashwauk, the State's estimate 7296 cubic yards of solid rock, while we have on record 7624

cubic yards of solid rock on this line.

Q. You mean, when you say on record in that instance, of original construction, or including work done since?

A. Including work done since, which has actually been measured.

Attorney General YOUNG: Is that true of all these statements?

WITNESS: Yes, sir; where we say "on record."

Attorney General YOUNG: It includes original construction and work done since?

WITNESS: And work done since that has been actually measured; that is, we have an actual return of that yardage as having been moved.

Attorney General YOUNG: But it is not claimed that those were the amounts moved on the original construction?

WITNESS: Not unless I said so.

Mr. DURMENT: As I understood you, on the first example given, the seventh section, Willmar to Jasper, that was original construction?

WITNESS: Yes, sir.

Mr. DURMENT: The others were not.

Q. Have you any other illustrations of that in your notes?

A. On Sections 2 and 3, at Minneapolis, where a larger amount of rock work is found than on any other section in Minnesota, the estimates compare as follows: Loose rock, Railway estimate, 17,750 cubic yards; State's estimate, 16,136 cubic yards; difference, 1614 cubic yards. Solid rock, Railway estimate, 159,750 cubic yards; State's estimate, 145,227 cubic yards; difference, 14,523 cubic yards. In both instances the difference is exactly ten per cent of the State's estimate, showing that a horizontal reduction of ten per cent has been made in our quantities on those sections.

The MASTER: How is hard rock distinguished from loose rock, in your definition?

WITNESS: By the manner in which it has to be taken out. Solid rock necessarily has to be shaken with powder. Loose rock is rock which can be moved without blasting; although blasting may be occasionally resorted to it can be removed by picking.

Q. Now, recurring for a minute to the question of hard-pan, Mr. Morgan, I think called attention to seven different lines in Minnesota upon which your estimate shows increases in the quantities of hard-pan, and he drew certain deductions as to percentages on original construction, as I recall it, and as shown in your estimate or estimates in this case. I have in mind his testimony on page 1444 (transcript), to which we have already referred; but have you prepared from your record figures showing the original quantities of all material and other quantities in those seven different lines from which you can testify now?

A. Yes, sir.

Q. What do your records show as to the total number of cubic yards of all material on original construction on those seven lines?

A. They show 12,301,454 cubic yards.

Q. Now, that is the total quantities on original construction, and of those quantities, what number of yards was hard-pan?

A. 276,680 cubic yards.

Q. And that is what per cent of the total original quantities?

A. 2.3 per cent.

Q. Now, then have you compiled the amount of cubic yards of all material handled by extra work on record since original construction?

A. Yes, sir; on those seven lines it amounts to 6,426,756 cubic yards.

Q. And extra work not on record of all kinds on those seven

lines amounts to how much?

A. 1,192,805 cubic yards.

Q. And the total of extra work on record and extra work not on record amounts to what?

A. Amounts to 7,619,561 cubic yards.

Q. Now, how many cubic yards of hard-pan have you now estimated or, as shown in your exhibits, are estimated on those seven lines?

A. 1,908,750 cubic yards.

Q. Now, that is hard-pan handled since original construction?

A. No, that is the total hard-pan, includes what was handled on original construction.

Q. The original hard-pan was 276,680 cubic yards, as you have already given it?

A. Yes, sir.

Q. Deducting that from total hard-pan, leaves 1,632,070, and what percentage is that of the extra work done since original construction?

A. That is 21.4 per cent of the total cubic yards done since original construction.

Q. Now, if you add the cubic yards handled on original construction to all of the cubic yards handled since that time, you get the total amount of yards handled on those seven lines?

A. Yes, sir.

Q. And that amounts to what figure?

A. 19,921,015 cubic yards.

Q. The total amount of hard-pan that has been handled on those seven lines is 1,908,750, which you have already given, I think. Now, what percentage of the total number of yards handled on those seven lines is the total amount of hard-pan?

A. 9.5 per cent.

Q. Where have you gotten these figures from, Mr. Hogeland?

A. They are taken from our records and I think are shown

pretty largely in the exhibits which have been put in.

Q. With the one exception of the extra work not on record, that, as you testified in your original testimony, is based upon your judgment and your knowledge of the different lines during your long experience in connection with the engineering department of this Company; is that right?

A. Yes, sir.

The MASTER: About what per cent would that be of the whole?

Mr. HOLDEN: I don't know that he has figured that.

Q. I don't know whether you have figured that, but will you just state again the number of cubic yards of extra work not on record?

A. 1,192,805.

Q. And state the total number of yards in all those seven lines.

A. 19,921,015.

Q. So the ratio is something under 1 to 19.

Mr. DURMENT: Can he state the percentage of the hard-pan not on record, how much he estimates?

Mr. HOLDEN: The percentage of the total yardage which he estimated extra work not on record bore?

The MASTER: What I had in mind in asking that question was what portion of this work was a matter of record accessible to all parties that wanted to examine the record.

WITNESS: All but about 6 per cent.

Mr. DURMENT: In making your estimate of 1,192,805 cubic yards of extra work not on record, what number of cubic yards did you estimate for hard-pan.

WITNESS: I cannot tell you. We did not separate it in that way.

Mr. HOLDEN: Mr. Hogeland is figuring that percentage again for a minute.

WITNESS: It is almost exactly 6 per cent. Those agree with Ex. 2.

The MASTER: That is, of all of this work you have a record but 6 per cent.

WITNESS: Of the seven lines that we have under consideration.

The MASTER: Of the seven lines that you are considering now?

WITNESS: Yes, sir.

Q. And on your Ex. 3, covering all the lines in the state, as I recall it, the exhibit shows but four per cent was made up of extra work not on record?

A. Yes, sir; it is shown at the foot of the column under extra work not on record.

The MASTER: Now, may I ask, right here, if all these records have been accessible to the State's witnesses for the purposes of examination in order to verify these statements here?

WITNESS: Yes, sir.

The MASTER: So that they could determine whether this 6 per cent, as you give it now, for the seven lines, and 4 per cent for the whole, was all that was not accounted for by the records?

WITNESS: Yes, sir.

Q. As a matter of fact, is it not true, Mr. Hogeland, that of these seven lines Mr. Morgan's testimony was quite largely directed to five of them and his examination of our records was made largely in reference to those five, Brookston to Eliis, Deer River to Fosston?

A. Four of them, I think.

Q. Will you just read those that you understand he directed his particular attention to and examined all of the records in our offices that he cared to relating to them?

A. Yes, sir. Brookston to Ellis, Deer River to Fosston, Chisholm to Virginia and Cloquet to the state line, are the four which he looked into more fully than any of the others.

Q. Well, he did give some testimony, did he not, as to the

line from Willmar to Jasper, as I recall it?

A. Yes, sir; but I do not think that he went into the original records much for that line.

Q. Now, I wish you would take up the question of the grading quantities on the various sections into which the Great Northern lines have been divided in the state of Minnesota, and compare your estimate with the State's estimate and make such analysis of the differences as seem important to you, taking Section 1, for instance, which is St. Paul to University switch.

The MASTER: In this connection will Ex. 3 be the basis?

WITNESS: Yes, sir; Ex. 3 will be the basis.

Mr. DURMENT: Will that be compared with Mr. Morgan's?

WITNESS: Yes, sir; compared with Mr. Morgan's grading figures. Section 1, St. Paul to University switch, Railway estimate, quantities paid contractors on original construction, 25,739 cubic yards; quantities estimated from profiles, 4,104,791 cubic yards; total 4,130,530 cubic yards. State's estimate, 3,755,027 cubic yards; difference, 375,503 cubic yards, which is exactly 10 per cent of the State's estimate. The State has evidently made no allowance for settlement on a profile estimate, although Mr. Morgan testified, in the Northern Pacific case, that he allowed 10 per cent for settlement.

Q. Now, can you give the reference to that testimony?

A. Page 2309 (transcript).

Q. And have you the exact language that he used upon that point in the Northern Pacific testimony?

Mr. HOW: Well, he testified that it was customary and proper in all cases to do it.

Attorney General YOUNG: And that he had done it.

Mr. HOW: Yes, and that he had done it. Mr. Morgan also testified, in this case, that he had made his estimates in exactly the same way as he had made them in the Northern Pacific case.

WITNESS: I think he did.

Attorney General YOUNG: What makes you state, then, that he didn't make any allowance for the settlement of the grade?

WITNESS: I think he testified, when that was drawn to his attention, that he reduced the estimate 10 per cent, that is, reduced our figures 10 per cent.

Attorney General YOUNG: You are stating positively what he did or omitted to do?

WITNESS: Well, I qualified that. I said he evidently had.

Mr. HOLDEN: Isn't this the fact, that in Mr. Morgan's testimony in this case he stated, (I think repeatedly,) that he disallowed all work claimed by Mr. Hogeland which was not shown by our final estimates or in some form by record, and in cases where Mr. Hogeland had made, as he phrased it, arbitrary additions of certain percentages, he disallowed that, and I think to that extent his method shows it was different than it was in the Northern Pacific case. I did not recall it as you stated, General, that he followed the same method, and it seemed to us, from the appearance of these figures, as in this first illustration, that in the Northern Pacific case, where the quantities were arrived at largely from profile estimates for the want of other records, Mr. Morgan uniformly allowed 10 per cent for settlement and in cases on the Great Northern line, where, in some of the sections, profile estimates were largely resorted to, any such percentage was disallowed, and the purpose of this testimony is simply to point out the differences between the State's estimate in the Great Northern case and the Railway's estimate and ultimately to claim, as Mr. Morgan said, that we are entitled to the universal rule which is followed in this case and which Mr. Morgan said was the universal rule on profile estimates. It is proper to add at least 10 per cent to cover quantities which have settlement and are not capable of now being measured.

The MASTER: I believe it was conceded, early in the case,

that an excavation would not fill an embankment of like dimensions.

Mr. DURMENT: Overfill, wasn't it?

The MASTER: I think I got that impression in my mind early in the case, that is, that an excavation would not fill a like area for an embankment.

Mr. HOLDEN: I think that is a wrong idea.

Mr. DURMENT: It is just the opposite, isn't it?

The MASTER: I supposed it was the other way.

WITNESS: It depends, if I may explain, on the kind of material. Take rock, for instance, will swell and make considerably more embankment than it measured in the cut. Clay very often is the same way. Sand and gravel come more nearly making about the same measurement in embankment that they do in excavation, and in all cases they will make as much yardage in embankment as they make in excavation.

The MASTER: Well, that is decidedly different. I am quite sure Mr. How will recall that. I called his attention to it, that that was a surprise to me, that an excavation would not make the same amount of embankment as a fill. You understand what I mean, what you take out of a hole won't fill a like hole.

Mr. HOW: It was my impression that it was testified that it would not.

WITNESS: There is this to be said, that very often after full settlement has taken place, two or three years, it takes more material than what you brought out of the excavation to make the same cubic yards.

The MASTER: Perhaps that was what was in my mind.

Q. Without taking the time to read any of the testimony of Mr. Morgan to which I had reference in the State's estimate a moment ago, I would simply call attention to page 1490 and following pages of his testimony. On page 1490, (being his testimony in reference to this Section 1, in which I asked the question on cross-examination,) as follows: "Q. You cut the

RUBBER PAGES

10 per cent off?" and he answered "Yes, sir." And the following pages will illustrate what I had in mind in reference to Mr. Morgan's method of disallowing certain percentages where Mr. Hogeland had added them.

The MASTER: As I understood you to say, he had apparently allowed them in the Northern Pacific case.

Mr. HOLDEN: His testimony on page 2309, and following, in the Northern Pacific case, as my conception of it is, and I think it is very plain that he not only had allowed it in the Northern Pacific case but that he agreed that that was the usual engineering rule in making profile estimates.

Q. Now, Sections 2 and 3 are University switch to Northtown Junction and Minneapolis Junction to Cedar Lake. The total of the Railway estimate is what, then, on those two sections?

A. 1,772,430; the State's estimate, 1,512,203; difference, 260,227. The State has reduced the Railway estimate about 15 per cent, cutting out the item of extra work not on record and making no allowance for settlement on the profile estimate.

Q. How far back does the construction of these two lines date?

A. Back to 1862.

Q. And what have you to say as to the fairness of your allowance, or claim for an allowance, of extra work not on record, and what have you to say about the amount of your extra work which is on record?

A. The records for twenty-five years after these lines were first constructed, are very incomplete and it is fair to estimate that a considerable allowance should be made for extra work not on record. It also seems fair that the usual percentage should be added to a profile estimate, which it does not seem that Mr. Morgan has done in this case.

Q. What have you to say as to the engineering practice of allowing anything to the amount of yardage on a profile estimate?

A. Why, it is always customary and it is always necessary to do so to arrive at anything like a fair estimate, and the amount of the percentage would depend on the character of the ground, whether it was pretty largely swamp or a large portion of it swamp where a great settlement would take place, or whether there would not be so much settlement; but, in any event, 10 per cent is considered a minimum percentage to add.

Q. Mr. Durment has asked me to inquire if you have data at hand, turning back to Section 1, which would tell what percentage you allowed in making up your profile estimate?

A. We allowed 10 per cent on that section.

Mr. DURMENT: Well, my suggestion was that if he had it here, it might perhaps save some time if he would just state, when he referred to any of these sections, that it includes profile estimate, the percentage he allowed for settlement.

The MASTER: Well, I understand that that is included in all these profile estimates—10 per cent.

WITNESS: Yes, sir; I think that is true of all of our profile estimates, that we have added 10 per cent.

Mr. DURMENT: Only 10?

WITNESS: Only 10 per cent.

Q. Taking Section 1, your Ex. 3 shows you estimated from profile 4,104,791 cubic yards. Now, if I understand your last answer, you estimated from the profile a certain number of yards and added 10 per cent of that amount and those two added together make this figure 4,104,791?

A. Yes, sir.

The MASTER: That is, what you mean by profile estimate is what the profile shows, plus 10 per cent?

WITNESS: Yes, sir.

The MASTER: Or whatever per cent you add?

WITNESS: Yes, sir; but in our profile estimates it means 10%.

Mr. HOW: That is the customary addition, is it not?

WITNESS: Yes, sir; it is.

Q. Now, take up Section 4, Cedar Lake to Breckenridge. Will you read the different figures on which the Railway estimate is made up?

A. Profile estimate, 3,142,550 cubic yards; extra work on record, 4 637,410 cubic yards; extra work not on record, 157,130 cubic yards; total, 7,937,090 cubic yards. The State's estimate, 6,261,360 cubic yards; difference, 1,675,730 cubic yards, or about 21 per cent less than the Railway estimate. The State's estimate is only 1,623,950 cubic yards over the amount we have on record as having been moved since 1886. This would amount to about 5,900 cubic yards per mile for the grading as it existed previous to 1886. The original profiles show that the grading on this line as first built amounted to about 15,000 cubic yards per mile.

Q. About three times the number of cubic yards which the present State's estimate allows per mile?

A. Yes, sir.

Q. Can you state, in a general way, what the age of this line from Cedar Lake to Breckenridge is?

A. Part of it was built in 1868 and the original construction built through to Breckenridge in 1873. The original grading quantities, as the line was first built to Breckenridge at that time, are not to be found, and that accounts for our making a profile estimate to cover the work up to a certain date and then adding the yardage on record put in the line after that date.

Q. Now, Section 5, which is the Hopkins branch, what are the figures there?

A. Quantities paid contractors on construction, 37,200 cubic yards; extra work on record, 1200 cubic yards; extra work not on record, 2520 cubic yards; total, 40,920. State's estimate, 37,200 cubic yards. The State has only allowed quantities we originally paid contractors, allowing nothing for yardage moved since construction.

The MASTER: Both of record?

WITNESS: We have some of record; yes, sir.

Q. 1200 cubic yards is shown here as of record and 2520 yards extra work not on record. Section 6, the Hutchinson branch.

A. Railway estimate, quantities paid contractors on construction, 689,593 cubic yards; extra work on record, 79,485 cubic yards; extra work not on record, 58,442 cubic yards; total, 827,520 cubic yards. State's estimate, 739,993 cubic yards. Adding the quantities paid contractors and extra work on record makes 769,078 cubic yards. The State's estimate is 739,993 cubic yards or 29,085 cubic yards less than we have on record.

Q. Section 7, Willmar to Jasper. Perhaps you can shorten this a little in that instance by just reading the total of the Railway estimate, because the different figures on which that total is made up are shown on Ex. 3.

A. Railway estimate, total 4,366,500 cubic yards; State's estimate 3,818,207 cubic yards. Adding quantities paid contractors and extra work on record makes 4,221,500 cubic yards. The State's estimate is 403,293 cubic yards less than we have on record.

Q. Section 8; where is that line?

A. Section 8 is the Sioux City and Northern from Garretson to the State line, in the southwestern part of the state.

Q. How is the estimate of the railroad made up in that case?

A. The estimate is made up from profile.

Q. You have no original records in that case?

A. No, sir.

Q. That line was built—

A. Was built by a separate corporation from Sioux City.

The MASTER: Those additional profiles are profiles that were made afterwards?

A. These are the original profiles. The original maps and

cubic yards as put in since construction.

Q. Sections 15 and 15½, Clearwater Junction to St. Cloud and the St. Cloud Dam Spur.

A. The Railway estimate and the State estimate agree, these two sections.

Q. Now, in that case you have some extra work not on record in each of those two sections?

A. Yes, sir.

Q. And the State seems to have accepted your figures there?

A. Yes, sir.

Q. Section 16, St. Cloud to Willmar.

A. The Railway estimate, total, 1,329,920 cubic yards; the State estimate 1,291,616 cubic yards; difference, 38,304 cubic yards. In this instance the State has allowed all of the work we have on record and about 50,000 cubic yards of the work we show as not on record, cutting out about 38,000 cubic yards without any apparent reason.

Q. Section 17, St. Cloud to Barnesville.

A. Railway estimate, 5,903,725 cubic yards; State's estimate, 5,424,501 cubic yards; difference, 479,224 cubic yards. The State has allowed all we have on record but has not allowed for any yardage moved and not on record. This line was built from 1872 to 1879, and as no attempt was made by the operating officers in early days to report extra grading work done, it is certain that a large yardage was so moved and should be allowed.

The MASTER: You say you are satisfied a large yardage ought to be allowed. Why?

WITNESS: I had in mind this: that where our records were very complete, it would not be proper to make so much allowance for work not on record as it would where the records were very incomplete.

The MASTER: On what basis do you make those allowances? I do not know but that has been fully explained, but it is out of my mind just now.

Q. I wish you would explain that again.

A. I base that on my knowledge of what has been done on various lines in the way of cleaning out cuts, widening banks, strengthening the shoulders of the roadbed at bridges, etc., and as to how complete the records were of all such work that had been done, I think it could be considered as of the same class of work that Mr. Morgan puts under Adaptation and Solidification of Roadbed. It covers very largely the same class of work which Mr. Morgan explained that he allowed in that classification, or rather, in that item.

The MASTER: Has there been a personal inspection by you in each case here?

WITNESS: Not previous to making this estimate, but I am very familiar with every one of these lines in Minnesota.

Q. You say not previous—

A. I meant not particularly for this purpose.

Q. But over how many years has your experience been in direct connection with all these Minnesota lines?

A. Thirty years.

The MASTER: It is, then, measurably an arbitrary?

WITNESS: It is; yes, sir.

Q. Now, you have not shown in your estimate, as is well understood, any separate item or claim corresponding with Mr. Morgan's figure representing his idea of adaptation and solidification?

A. No, sir; there is no separate item for that.

Q. And as you view the matter, you and he are not apart on the fact of that class and character of work having to be done?

A. No, sir; I think we agree pretty closely on that, and I have attempted to put it into the grading quantities.

Q. On each section?

A. Yes, sir.

Q. As you made up your figures?

A. Yes, sir.

Q. And he showed it by an arbitrary percentage at the end in his estimate for the State?

A. I think that is true.

Q. And has fully explained in his testimony as to how he arrived at that. Now, Section 18, Sauk Center to Park Rapids.

A. Railway estimate, total, 1,563,800 cubic yards; State's estimate, 1,434,617 cubic yards; difference, 129,823 cubic yards. In this case the State has allowed all we have on record, but none or a very small amount for work not on record. Part of this line was built in 1882, and it is certain that a considerable yardage has been moved since construction of which we have no record.

Q. Section 19, Park Rapids to Cass Lake. In that case the difference between you and the State is 49,170 cubic yards?

A. The same explanation applies to this Section 19 as to Section 18.

Q. Section 20. The difference there is 59,826 cubic yards. Does the same explanation apply?

A. The same explanation applies to that as to Section 18.

Q. That is, that the State has allowed just what you have on record, but nothing additional?

A. Nothing, or very little.

Q. Section 21, Fergus Falls to Pelican Rapids.

A. The State's estimate and the Railway's estimate practically agree.

Q. Section 22, Moorhead to Brushvale?

A. In that case the State has allowed what the Railway claims as quantities on record, has not allowed anything for the extra work not on record.

Q. The difference there is 21,327 cubic yards?

A. Yes, sir.

Q. And is it your opinion that that difference is properly allowed for extra work for which there is no record?

A. Yes, sir; I think so.

Q. Section 23, Barnesville to Moorhead. The difference there is rather small, 8,636 yards.

A. Both parties made profile estimates and naturally you might expect that much of a difference in profile estimates.

Q. Does it appear that the State made any allowance of the 10 per cent?

A. I should think they must have made some allowance there.

Q. Section 24, Barnesville to St. Vincent.

A. The Railway and the State agree on this estimate, on quantities.

Q. The quantities were arrived at in that case from the profile estimate?

A. The quantities were arrived at in that case from the profile estimates.

Q. And it appears to you, therefore, in that case that the State allowed 10 per cent?

A. I think they must have; yes, sir.

Q. You added 10 per cent to your profile estimate?

A. Yes, sir.

Q. Section 25, Moorhead to Carmen, the difference there is 61,548 cubic yards?

A. Yes, sir; the difference is the extra work not on record. The State has allowed quantities which we have on record.

Q. Section 26, Crookston to East Grand Forks, the difference is 81,152. That line was estimated by you from profile?

A. Yes, sir; and it does not seem that there should be such a great difference between the two estimates.

Q. Now, have you had your estimate rechecked?

A. Yes, sir.

Q. Since Mr. Morgan's testimony?

A. Yes, sir.

Q. Have you found any reason to change your figures?

A. No, sir; I think it is substantially correct.

Q. And you are unable to see how on a profile estimate there should be a difference of 81,152 cubic yards?

A. Yes, sir; I am; I can't understand how there should be that difference.

Q. Section 27 Ives to St. Hilaire.

A. The State has allowed the quantities which were paid contractors on construction but has not allowed for extra work not on record, which we consider should be put in.

Q. When was the construction completed on that line?

A. In 1882; it would seem as though there had been some yardage moved on this line since the construction.

Q. Well, do you know whether there has or not, as a matter of fact?

A. Why, yes, sir.

Q. From your knowledge of the line and your connection with it?

A. Yes, sir; there has been some yardage moved.

Q. And did you take that fact into consideration when you made up your estimate and when you allowed 16,503 cubic yards for extra work not on record?

A. I did.

Q. Section 28, Red Lake Falls to Thief River Falls. Analyze the differences in that case, please.

A. The difference is altogether the extra work not on record. Very extensive slides have taken place from time to time at or near Red Lake Falls on this line and have been cleared away by the operating department, and other work has been done of which we have no record, so that it is certain that some allowance should be made for such.

Q. Section 29, Thief River Falls to Greenbush. Does the same explanation apply there?

A. Hardly. The State has allowed the quantities paid contractors on construction. They have made no allowance for any yardage moved since construction, although there has been

some moved in the way of ditching and shouldering of banks since construction.

Q. Section 30, Carmen to Fosston. When was that line completed?

A. In 1888 it was constructed.

Q. Do the State's figures allow anything for any work done since construction not on record?

A. No, sir.

Q. Your figures do?

A. We allowed 70,404 cubic yards and it is certain that some allowance should be made, and I believe that is about right.

Q. Section 31, Coon Creek to Hinckley.

A. The State has allowed the quantities which we have on record, have made no allowance for extra work not on record.

Q. Your figures allow 64,013 cubic yards of that character. What do you say as to the propriety of an allownace of that nature, from your knowledge of that line?

A. I think it is about right.

Q. Sections 32 and 33, Sandstone to Quarries and Hinckley to Foxboro. Analyze the differences there.

A. The difference between the Railway and State estimates is 304,258 cubic yards; that is, the State has not allowed us by about 240,000 cubic yards as much yardage as we have on record, and has not allowed any yardage for what we claim should be added for extra work not on record.

Q. Sections 34 and 43, Eastern Minnesota Railway & Duluth and Duluth Terminal Railway.

A. The two estimates agree.

The MASTER: That is, they have allowed 10 per cent on the profile?

WITNESS: Evidently; yes, sir.

Q. Section 36, Cloquet to Deer River.

A. The difference between the State and Railway estimates is 57,451 cubic yards. There is no apparent reason why the two

estimates should not come more nearly to agreeing. It seems probable that they have not allowed 10 per cent for settlement on the profile estimate which was used for part of this line.

Q. What is the character of the country through which that line runs?

A. There is a considerable amount of swamp.

Q. And under those conditions what do you say as to the propriety—

A. Why, there certainly should be a percentage added to a profile estimate.

Q. Section 37 is Brookston to Ellis.

A. The difference there is 47,247 cubic yards, the State having allowed all that we have on record but nothing for cubic yards moved as extra work but not on record.

Q. You estimated, as shown on your Ex. 3, 47,257 cubic yards extra work not on record and that is exactly, to a yard, the difference between you and the State?

A. No, I think there is 10 yards difference; it is practically the same.

Q. But there is a difference of 10 yards; probably that is a clerical error, I take it. Section 38, Mississippi to Dewey Lake. Is that based on profile estimates?

A. A part of it.

Q. And extra work on record.

A. The part of that line that was estimated from profile was the original main line which was not built by the Great Northern Company, but the extra work done since construction has been practically all in the way of putting in mining spurs. That, of course, we have on record. The State's estimate for this line is 27,560 cubic yards less than ours, probably due to the State not allowing as much for settlement on the profile estimate as we figure which was 10 per cent.

Q. Now, Section 39, Chisholm to Virginia; the difference there is 60,917 cubic yards.

A. Yes, sir. In that estimate we had included 70,887 cubic yards as extra work not on record, so that the State has cut out nearly all of that yardage as extra work not on record.

Q. Section 40, South Range Line. Your difference there is 55,793 cubic yards.

A. Yes, sir; and in that line we had extra work not on record, 40,413 cubic yards, from which it appears that the State has not allowed us by about 15,000 cubic yards as much as we have on record, and has made no allowance for the extra work not on record.

Q. Kelly Lake to Nashwauk, Section 41.

A. The total of the Railway estimate was 755,670, all of which we have on record.

Q. That is a comparatively recently constructed line, is it not?

A. Yes, sir; and the records are pretty complete.

Q. And your whole figure is made up, as you say, of work that is on record?

A. Yes, sir.

Q. The State's estimate is how much below you?

A. It is 80,753 cubic yards.

Q. Section 42, Deer River to Fosston. Your difference there is 249,834 cubic yards. Now, in making up the State estimate, what do you find to be the fact?

A. I believe they have cut out the extra work not on record, which was 250,921 cubic yards, which is within about a thousand yards of the difference between the two estimates.

Q. Now, you seem to claim there, as shown by your Ex. 3, considerable yardage and extra work not on record. What reason have you for that claim?

A. Well, because of the nature of the country through which the line runs. There would be more of that class of work of cleaning out cuts, ditching, sloping and widening embankments, which would be done from time to time by the section-men and

extra gangs and not reported.

Q. Now, Section 44 and 45 are, respectively, the Minneapolis Union and the Minneapolis Western Railway lines. The estimates agree there?

A. Yes, sir.

Q. And Section 46, Kelly Lake to Fermoy, Mr. Morgan testified, I think, that his figures did not include that line because it was under construction at the date at which he closed his figures?

A. Yes, sir. That line is not included by the State.

Q. Now, have you the quantities paid contractors on the construction of that line?

A. Yes, sir; 732,655 cubic yards.

Q. Now, Mr. Hogeland, that completes your review of the different section into which the different lines are divided in this state, and since the testimony of Mr. Morgan was given have you reviewed the figures which you have been going over, your own figures and his figures, to determine in your own mind whether your figures should be changed in any respect?

A. Yes, sir.

Q. And after such review have you made any such changes or found any reason to make any?

A. No, sir; I have not.

Q. Any reason to doubt that your estimate, where it was an estimate of extra work not on record, has been excessive in any of the different sections?

A. No, sir; I have not found any such place.

Q. Now, then, will you sum up the differences between you and Mr. Morgan in yardage?

A. The total difference between the quantities of grading, as shown on the Railway estimate and the State estimate for all the lines in Minnesota, is 6,206,592 cubic yards. From the previous analysis these differences are made up approximately as follows: First, the Kelly Lake to Fermoy line was not esti-

mated by the State because it was not completed June 30, 1907, 732,655 cubic yards; second, extra work on record as included by Railway Company but not allowed by the State, 1,130,000 cubic yards; extra work not on record as included by the railway, but not allowed by the State, 1,975,000 cubic yards. Differences in estimates made from profile, probably accounted for by State not allowing the usual and proper percentage for settlement, 1,967,000 cubic yards; fifth, abandoned lines included by the Railway but not by the State, 402,000 cubic yards.

Q. The sum of these figures makes the figure you first gave of 6,206,655?

A. Practically so.

Q. Now, then, this last item you mentioned, abandoned lines, will you state just what you have in mind as to yardage on lines of that character?

A. That are included in my estimate?

Q. Yes, this 402,000 cubic yards.

A. That includes abandoned lines between Cedar Lake and Breckenridge, in three or four different places, and between St. Cloud and Barnesville, in about as many places, amounting to about 402,000 cubic yards.

Q. Why do you include that amount of yardage in your claim in this case?

A. Because I consider that, in reproducing the lines at the present time, the work would be carried out practically as it was originally; that is, we would build those comparatively cheap and temporary lines in about the same way that they were originally, and that is because it would be ultimately more economical to do it that way. Wherever these changes of line occur it required very heavy work to make the change in line, and it would either have caused a great delay in completion of the system in Minnesota or a large increase in the price per cubic yard to have carried out that heavy work as a part of the original construction.

Q. Have you included any yardage on abandoned lines which would not be so made use of in the event of a reproduction or reconstruction of the system?

A. No, sir; not to my knowledge.

The MASTER: Are there any such lines?

WITNESS: Yes, sir; from Hopkins to Excelsior and St. Bonifacius is an entire line abandoned, which of course we have not included; between Crookston and Fosston there was a stretch of line of about fifteen miles that was abandoned, which I did not include because the same conditions would not apply to that. I did not include the changes of line between St. Paul and Minneapolis that were originally made, I simply took the line as it exists today.

Q. Are there any others?

A. Those are all I have in mind.

Q. Now, then, you spoke a few minutes ago about the item of adaptation and solidification allowed by Mr. Morgan. Have you a note there of the gross figure in the Great Northern case that Mr. Morgan allowed on that account?

A. Yes, sir; $3,219,642.09.

Q. I believe in Mr. Morgan's annual report to the Railroad & Warehouse Commission of 1908 he, on pages 25 and 26, describes what his conception of that item is, and we will not stop to incorporate that here except by this reference. Now, what is the total amount, in dollars and cents, allowed in Mr. Morgan's figures exclusive of this sum for adaptation and solidification?

A. It is $16,531,191.24.

Q. Now, if you add to that the amount allowed for adaptation and solidification, you get what?

A. $19,750,833.33.

Q. And your figure, based upon the yardage you claim and the unit prices you have claimed, is what?

A. $21,644,343.42.

Q. And the difference is what?

A. The difference is $1,893,510.09.

Q. And that difference, spread over your yardage, would amount to about how many cents per cubic yard?

A. About 3.1 cents per cubic yard.

Q. Now, I think it was testified on page 2335 (transcript) in the Northern Pacific case, by Mr. Morgan, that 1½ cents per cubic yard would cover everything over and above the contract price for material hauled a thousand feet; what do you say as to that?

A. That it is entirely too low; that the difference between prices paid contractors and the full cost of the work per yard, after the item of transportation, overhaul and extra bills properly applied to grading, are taken into consideration, that 1½ cents per cubic yard is entirely too low.

Q. Now, you have called my attention to some comments you have made on that subject, and I wish you would go ahead and say what you have in mind about that matter.

A. I think the exhibits which we have presented, both the Northern Pacific and ourselves, (Ex. 4 of ours, I don't recall the Northern Pacific's number) bear out my statement that that one and one-half cents per cubic yard is entirely too low.

Q. You mean the exhibits showing the difference between the price paid contractors and the total price?

A. Yes, sir; what has been referred to here as the "constant."

Q. Now, since Mr. Morgan's analysis of your Ex. 4, you have reconsidered that exhibit, have you (and we will come to that in a moment), but before taking that exhibit up specifically, have you any general observations to make on that, or have you made any comparison of prices allowed for earthwork on Northern Pacific and Great Northern lines that are approximately alike and in the same vicinity, close together?

A. Yes, sir; it would appear from an examination of the State's estimate for both the Northern Pacific and ourselves,

that Mr. Morgan has used no higher prices for work on our line, and, in many cases lower prices. Comparing some of the lines that are in the same locality, the Northern Pacific and Duluth terminal, 27 cents; Great Northern and Duluth terminal, 27 cents; the Northern Pacific, Bald Eagle to Duluth, 30 cents; Great Northern, Cook Creek to Foxboro, 28 cents.

Q. Are you familiar with both of those lines?

A. Yes, sir.

Q. Have you any reason to believe that there should be a difference per cubic yard in earthwork prices?

A. I don't see why there should be. The N. P., Carlton to Cloquet, 34 cents per cubic yard. The Great Northern, state line to Cloquet, 34 cents.

Attorney General YOUNG: There is a case where it is the same?

WITNESS: Yes.

Q. And that is true for the St. Paul terminal, both roads have the same price, of 27 cents?

A. Yes, sir. From Northtown to Staples, Northern Pacific, 26 cents per cubic yard; Great Northern, Northtown to Sauk Rapids, 23 cents. It appears as though they should be about the same. Northern Pacific, Winnipeg Junction to Grand Forks, 21 cents; Great Northern, Barnesville to St. Vincent, 18 cents. Those lines are in the same territory it seems as though the price per yard ought to be the same.

Q. Now, then, on the Thief River Falls to Greenbush line, which is Section 29, how much was allowed per cubic yard for all materials by the State's estimate?

A. About 18 cents per cubic yard for all earth material. The actual cost, as it was constructed in 1904, was 21½ cents per cubic yard.

Q. Well, from what source do you derive that figure of 21½ cents?

A. From our records, construction books.

Q. And that is a comparatively recently built line, in the northern part of the state?

A. Yes, sir; built about five years ago.

Q. Now, the Kelly Lake to Nashwauk line, another recent construction, Section 41?

A. Yes; not so recent as the Thief River Falls to Greenbush.

Q. Well, compare the prices allowed by the State and your actual cost prices.

A. The State has allowed 37½ cents per cubic yard, whereas, the actual cost, when constructed in 1902, was 42½ cents per cubic yard. It is fair to say that the contract prices now are a little bit higher than they were then.

Q. Now, then, turn to Ex. 4.

Attorney General YOUNG: Do you mean in those two instances that you have now just referred to, Mr. Hogeland, that the 21½ cents on the Thief River Falls to Greenbush line is the amount paid to contractors?

WITNESS: No, that is what the work cost.

Attorney General YOUNG: That has something added to it?

Mr. HOLDEN: Well, we will come to that later.

Attorney General YOUNG: Let me ask whether on the last one you mentioned, the 42½ cents that you have called the actual cost is the amount paid contractor.

WITNESS: No, sir; that is what the work has cost.

Q. You mean not only what was paid the contractor, but adding all charges?

A. Yes, sir; the same as Mr. Morgan's is supposed to be.

Q. That will be shown.

A. It is supposed to make a comparison with Mr. Morgan's. As I understand, Mr. Morgan's figures were to cover the cost of the grading, and mine is made the same.

Attorney General YOUNG: Yours includes extra work not of record?

WITNESS: No, this is the unit prices, and has nothing to do with the—

Q. Now, that will be all gone into, a little bit further, on this Ex. 4. I wish you would take up the matter of Mr. Morgan's comments upon your Ex. 4, and if you have something prepared on that subject you may read it, if you like, or state the substance of it.

A. The only use we made of Ex. 4 was to justify the grading prices we had used. These grading prices were put on each piece of work by me in accordance with my knowledge of each line, my experience in that class of work and general knowledge of what such work had been costing the Company. After the grading prices had been put on each line we made up Ex. 4.

Q. Now, just let me interrupt you there. You mean after the grading prices had been put on each line, as shown in your Ex. No. 2?

A. Yes, sir.

Q. Which is your estimate and judgment of the proper prices that the work, classified as you had classified it, would cost?

A. That is true.

Q. And you mean that after making up Ex. 2 and putting your prices on it you then made up your Ex. 4?

A. Yes, sir.

Q. That, I think, was fully stated before, but I wanted to make it clear now. Now, proceed.

A. Ex. 4 was made in a comparatively limited time, not sufficient to analyze all the construction charges on each line before it was presented in this case. From the detailed examination and analysis we have made of these charges and the examination recently made by the accountants of the Interstate Commerce Commission, we are satisfied that Ex. 4 should be corrected in certain particulars.

Q. Now, then, you mean by that, that since Mr. Morgan gave his testimony and since you gave your testimony, you have made a further and more detailed and critical analysis

of the construction charges on each of the lines embraced in your Ex. 4?

A. Yes, sir.

Q. Now, you refer to some examination made by accountants of the Interstate Commerce Commission. Very briefly, state what you mean by that, and what bearing that has had upon your work in re-examining the figures shown in your Ex. 4.

A. I refer to several accountants who have been sent up from Washington to go through our construction ledgers for each one of these lines and check the cubic yards and the charges, so as to satisfy themselves that the charges and the yardage refer to the same thing; that is, that the charges and the yardage agree. These men have been working under Mr. Morgan's direction, and we have worked along with them, to determine all of these things for ourselves, as well.

Q. You have no knowledge of any of their final conclusions or results at this time, I take it?

A. No, sir; I have not.

Q. But, to what extent have your men, and yourself in supervision, worked with them over your records in determining the correct amount of yardage for each of the lines shown in Ex. 4 and the correct charges which should be applied to the yardage in each case?

A. We have worked with them constantly. Where there were any cubic yards or charges that apparently did not agree, the matter was gone into carefully by us to get the matter in the most correct shape we could. That has been under way for almost two months.

Q. Now, then, proceed with your general remarks, before we take up the exhibit in particular.

A. In order to be sure that the total charges to grading are only those that belong to total yardage, we have cut out all superintendence charges or other charges for each line where

there was any question of doubt as to such charges being applicable to the total cubic yards as shown. The method of cutting out those charges rather than putting in additional cubic yards was adopted because it is impossible in all instances to determine just what additional cubic yards these charges cover. Certainly Mr. Morgan's method, (pages 1450 and 1451 of the reporter's transcript), whereby he arrives at 943,648 cubic yards as corresponding to those charges on the line Cloquet to Boylston, is erroneous. He assumes, because there are some entries in the construction ledger of this line as late as September, 1903, that it is right to take all the yardage he can find in our reports and records as placed on this line up to the same date and set that yardage against those charges. As a matter of fact, after December 31, 1901, the construction ledger on this line shows practically no charges to grading, only $1,075.07 being so shown; and yet Mr. Morgan has included nearly 200,000 cubic yards of grading as put in this line in 1902 and 1903, which he says should properly go against these charges. Operation began on this line in November, 1899, but it was interrupted several times for two years thereafter because of the cuts and fills sliding, banks settling, etc. The regular operating expense ledger was opened in November, 1899, and all charges to maintenance thereafter were entered therein. The regular additions and improvement ledger was opened in January, 1902, and thereafter all charges to additions and improvements, including grading, were entered therein; so that the impression that Mr. Morgan has left that all charges to grading on this line up to September, 1903, are shown in the construction ledger is not correct.

Q. Now, in line with what you have said about your reexamination of the yardage and the charges on the various lines shown on your Ex. 4, have you prepared a new Ex. 4 which has taken into account all of the errors which may have been found in this later examination?

A. We have; and I desire to add that this does not imply that there are mistakes in the construction ledger, but it does show that we made mistakes in the analysis which we originally made in preparing Ex. 4, and this new exhibit is made up cutting out those mistakes.

Q. Now, I wish you would explain to the Master just what change you have made in the basis adopted in preparing your new exhibit.

Recess until 2 P. M.

AFTERNOON SESSION.

Last question read.

Mr. HOLDEN: At this time I desire to offer in evidence this amended Ex. No. 4, and ask that it be marked "Second Amended Ex. 4."

A. Ex. No. 4 was made to show the average cost of grading as paid to contractors on the various lines listed in that exhibit and also the total charges to the grading on each one of these lines. The figures were taken from the construction ledger of each line, and when we made up Ex. 4 originally we supposed that the total charges applied only to the total yardage as shown in that exhibit. Mr. Morgan's examination, as well as our own further examination and the examination of the accountants of the Interstate Commerce Commission have shown that we were mistaken in six instances as to the correct yardage, and in nearly every instance as to the total charges. The construction ledgers were proper enough, but we made the mistake in taking out the total charges to grading and putting those charges against the yardage as paid to the contractors. I can illustrate that by the line that Mr. Morgan criticised most, between Boylston and Cloquet. After the contractors completed their work on that line and it was thought to be about ready for operation, a period of wet weather came in, very heavy rains, the cuts filled up somewhat, the embankments washed down, and

it was necessary to put on forces of Company men, working at day's labor, cleaning out the cuts, strengthening the banks, and doing work of that kind, over and above what the contractors had done; and the charges for that work showed in the construction ledger as charged to grading, which was all proper enough, but it didn't apply to the yardage which had been moved and the contractor had been paid for. Therefore, in making up this exhibit for that purpose, such charges as that should have been cut out, and we have done that in this amended, or rather this new exhibit.

Q. You mean that those charges for that Company work were not shown on the construction books, but were charged against maintenance?

A. No, sir.

Q. I haven't got it right then.

A. They were in the construction book, in the construction ledger,—properly, too,—but they could not be charged to anything else except construction, the line was not in operation; but the mistake we made in our Ex. 4 was in assuming that all of those charges which appeared against construction grading applied to the construction yardage.

The MASTER: That is, the contract work?

WITNESS: Yes, sir; the contract work. Now, in order to make this what we started out to make it it was necessary to make these corrections. That applies to the charges.

Q. Now, just a moment before we leave that: In your former Ex. No. 4 you had charges against that line of $1,411,645?

A. Yes, sir; total charges.

Q. Now, then, after the examination and revision, you have reduced those charges to $1,145,564.23, and that difference is reached by taking out of the total charges just what?

A. By taking out the charges which do not apply to the total yardage, 3,997,170 yards as moved by the contractors on that line.

Attorney General Young: It did apply to the yardage moved by these extra men?

WITNESS: Yes, sir. I really think some of it applied to that yardage, but because we have no means of separating it I have cut it all out.

Q. I was going to ask you, wherever there was any doubt about the application of any charges to any of the yardage shown on Ex. 4, what have you done?

A. We have cut out the charges.

Q. Cut out the charges. Now, this difference in the charges which you have cut out, state whether that amount, represented by the difference, was a proper charge against the grading work.

A. Yes, sir; it was a proper charge against the grading.

Q. But not a proper charge against the yardage done by the contractor?

A. That is correct.

Q. So that, getting back to the purpose of Ex. 4, it is not to show the total cost and all of the total yardage, but it is the proper charges that should be shown against the contractors' yardage?

A. Yes, sir.

Q. There may be and are additional charges against grading on some of those lines, but it is of the character you speak of, done after the contractor under his contract had terminated his connection with the work?

A. Yes, sir; and involved the moving of additional yardage.

Q. Now, then, looking at your second amended Ex. No. 4, in how many instances after this examination did you find any reason to change the number of yards?

A. In six instances.

Q. Those changes have all been made in this amended exhibit, have they not?

A. Yes, sir.

Q. The first instance is in the line Jennings to the boundary

line, constructed in 1902?

A. Yes, sir.

Q. That line was examined, was it not, also, by the Interstate Commerce Commission examiners?

A. Yes, sir.

Q. Do you know or are you able to state whether you have adopted all of the criticisms they made upon the records of the Company or the points made by those examiners as to determining the proper yardage on that line?

Attorney General YOUNG: Now, I think we would have to object to that; there is no possible way that we could compare or ascertain the truth of that.

Mr. HOLDEN: Well, I don't know that that is entirely true because this was all work done under Mr. Morgan's supervision. While I don't want to try a collateral issue here, or anything of that sort—

Attorney General YOUNG: Mr. Morgan has gone away; we have no connection with those men.

Mr. HOLDEN: Well, I don't want you to suggest here for a moment, nor do I want to take the position because Mr. Morgan has gone away, that there is anything happening here that wouldn't if he was here. That is his fault that he has gone away.

Attorney General YOUNG: Compare it with Mr. Morgan, if you want to.

Mr. HOLDEN: I am raising this point because it is Mr. Morgan's work.

Attorney General YOUNG: Well, it is not Morgan's work in this case.

Mr. HOLDEN: Well, I won't press the point.

Attorney General YOUNG: You see very well, Mr. Holden, we couldn't verify it.

Mr. HOLDEN: I don't see why you couldn't, because your own engineer has been in command of that work for two months.

Attorney General YOUNG: Absolutely not, he has left the state.

Mr. HOLDEN: Well, he has, within the last week or ten days.

Mr. HOW: What difference does it make whether you can verify it or not? It is proper.

Mr. HOLDEN: I say I shall not press the point, because it is not sufficiently material to make an issue on the point as to whether or not Mr. Hogeland's force and the Interstate Commerce Commission men came to an agreement as to those being the proper yards. That is what I had in my mind. If the objection is made I shall not press the point.

Mr. DURMENT: We will object to that as immaterial, in any event.

Attorney General YOUNG: It is immaterial and it is testing it by a standard that we can't reach.

Mr. HOLDEN: I will withdraw that question.

Q. Now, will you indicate the next line where any correction is made?

The MASTER: Excuse me. This refers now to the total yardage under the contract?

WITNESS: Yes, sir.

The MASTER: Where the mistake occurs, and if I put a pencil mark opposite that, I will get the items where the variance appears?

WITNESS: Yes, sir.

Mr. HOLDEN: The difference sometimes, I think, was in the classification. You will find that wherever there has been a change made, there is a difference in the column of earth as well as hard-pan, loose rock and solid rock, so that there has been a re-arrangement of the classification from a further examination of the account, and the mere fact that you find a difference in the column entitled Total Yardage does not indicate whether it is earth or hard-pan. It is apparent, though, from a comparison of the different columns. It may be in the classifica-

tion and partly in the quantities. (To the witness.) I am right about that?

WITNESS: Yes, sir; that is right.

Q. In some cases there was an error in the classification, in other cases, an additional quantity was found?

A. That is because the errors that were found in the yardage were either due to an omission of some piece of the line, which meant that it was not necessarily all earth that was omitted or too much was put in; it might have been hard-pan or loose rock or solid rock, so that in nearly every instance—no, in three of the instances out of the six, there is a change in not only the total yards but in hard-pan, loose rock and solid rock as well as earth.

The MASTER: I suppose even though Mr. Morgan is not here, there is some one here who can verify these figures or changes, is there not, General Young?

Attorney General YOUNG: We have no objection.

The MASTER: That is, I think attention ought to be called to the items very specifically and clearly so that any one, you or I or an engineer, could go down there and verify Mr. Hogeland's testimony.

Attorney General YOUNG: My objection, Judge, was this: the question asked by Mr. Holden was whether Mr. Hogeland and the Interstate Commerce Commission examiners had agreed.

The MASTER: That has been withdrawn.

Attorney General YOUNG: Well, now, we have no objection to any other test.

Mr. HOLDEN: Our conception of the matter has been that Mr. Morgan, being in full charge of those men that have been working for several months in our office on these exhibits, these very same exhibits are what those men have been checking up, because those exhibits were offered in the case in which they are making their examination, but they are the same exhibits,

and brought that examination so close to this case that it could not be ignored by either side. While they were checking this exhibit for another case it is the same exhibit.

The MASTER: Well, the point is this: the General says he doesn't object to any of this testimony, go right on and take it, and if they want to check it up they can send a man down there to check it up.

Attorney General YOUNG: Yes.

Mr. HOLDEN: That is just what has been going on for two months, and if any further checking is desired it is open to anybody that may be sent there.

The MASTER: I wanted it understood that if Mr. Morgan's figures, for instance, in any of these corrections, are questioned, the Master may expect that he will hear further in that regard.

Attorney General YOUNG: Yes, the thing that we objected to, your Honor, was—

The MASTER: I know what your objection was, as you stated. That has been withdrawn entirely and not in the case.

Attorney General YOUNG: All right.

Q. Now, the second line on which change in yardage was found necessary was—

A. Was Columbia Falls to Rexford.

Q. The third one is—

A. Greenbush to Warroad. It is down after 1906, right under that. Midway to Molson. The fifth one, Boundary to Karemeus, right under that. The sixth one, the Billings & Northern, —four lines from the bottom.

Mr. DURMENT: This refers to quantities?

WITNESS: Yes, sir. In regard to total charges, a correction has been made in every item, every line. It was found necessary to make some changes in the total charges.

Q. Now, will you, for the purpose of ready comparison, state the total yardage on your previous Ex. No. 4 and the total yardage as now shown?

A. The total yardage on previous Ex. No. 4 was 46,903,481; the total yardage on the second amended Ex. 4 is 47,278,121.

Q. So there has been an increase in the total yardage of how much?

A. 374,640 yards.

Q. Now, then, will you state the total charges shown in your previous Ex. No. 4 and the present total charges?

A. The total charges in previous Ex. No. 4 was $20,973,408, and in this second amended Ex. 4 it is $20,832,480.43.

Q. Will you state the difference between those two figures?

A. $140,927.57.

Q. That is to say, in the second amended Ex. No. 4 the total charges are that amount less than what they were as shown in the original exhibit?

A. Yes, sir.

Q. Now, will you state what difference these differences have produced on your final column entitled Average Cost Per Yard?

A. The average cost per yard on previous Ex. No. 4 was 44.7 cents; the average cost per yard on the second amended Ex. 4 is 44.1 cents.

Q. Difference of six-tenths of one cent?

A. Yes, sir.

Q. Now, in the total shown at the foot of second amended Ex. 4, there have been some revisions in the average contract price per yard of the different classes of material, resulting from this revision of the exhibit, have there not?

A. Yes, sir.

Q. Without taking time to state the differences on each of the four classifications, state what the former average contract price for all of the lines shown in the exhibit was, and what the present average contract price for all of those lines is.

A. The former average contract price per yard was 33.4 cents for all classes of material, and in this second amended Ex.

4 the average contract price per cubic yard is 33.6 cents.

Q. A difference there of two-tenths of a cent more than in the former exhibit?

A. Yes, sir.

Q. Now, you also worked out the total contract quantities on lines in Minnesota shown in this exhibit, with average prices per yard, and will you state whether the changes which were made on the Minnesota lines has made any change in the average price per yard?

A. Not in the average contract price per yard; no, sir. It remains at 23.9 cents.

Q. You mean by that, not unless the figures were carried out beyond one decimal?

A. Yes, sir; I presume that is possible, if it was carried out far enough there would be a little difference, but within a tenth of a cent there is no difference.

Q. Now, Mr. Hogeland, I wish you would state something as to just what the nature of the work has been in revising this exhibit. You have stated what the plan was, to eliminate all of the charges that were not clearly applicable to the total yardage shown; to what amount of detail has your force gone in checking this exhibit?

A. They have gone to a very large amount of detail and work, taking each construction ledger and analyzing the charges to grading, securing the original vouchers from which these charges were entered into the construction ledger, so as to ascertain what the work was, covered by these charges, and then to determine whether or not all the charges were proper as against the contract yardage.

Q. And I will get you now to state what your average figure of 44.1 cents, under your final column Average Cost Per Yard represents.

A. That represents the average cost per cubic yard of all classes of material as moved by the contractors after all charges,

such as overhaul, transportation of men, supplies for grading and extra bills, properly chargeable against those cubic yards of grading, have been taken into account. By deducting from that 44.1 cents per yard the average contract price, 33.6 cents per yard, we secure the so-called constant of 10.5 cents, in this amended Ex. 4 instead of 11.3 cents in the former Ex. 4.

The MASTER: 33.6 cents is what the contractor got?

WITNESS: Yes, sir.

The MASTER: And the difference between that and 44.1 cents is what you had to pay over and above what you paid the contractor to have the grading done?

A. That is it exactly.

Mr. HOW: It is what the contractor got as the contract price; and he got some in extra bills.

WITNESS: How is that?

Mr. HOW: That 33 cents is what the contractor got for his contract price, but he got some in extra bills?

WITNESS: Yes, that ought to be modified somewhat then, that escaped me. In addition to the contractor being paid the average price of 33.6 cents for all the yardage he moved, there were some extra bills, which are properly chargeable against grading, but were not measured in yards and returned to him in that way, so that should be pointed out, that the statement previously made was not strictly correct.

The MASTER: The charges against the contractor?

WITNESS: The contractor's charges against the Railway Company.

The MASTER: Yes, contractor's charges.

WITNESS: If the contractor did some ditching of such a nature that it could not be measured up, partly water (mostly mud), or did some road changes, which consist pretty largely in the clearing away of stumps and logs, and could not be readily measured up and was paid for that work on extra bills, that would be a proper charge against the grading, but there

would be no yardage to offset it. Extra bills of that kind would be included in those total charges.

The MASTER: That is, you mean they were contractors' extra bills?

WITNESS: Yes sir.

The MASTER: Contractors' extras?

WITNESS: Yes, sir.

The MASTER: And that is included in the 33.6 cents, is it?

Mr. HOW: No.

WITNESS: There is one thing further that should be said. I want to explain about the machinery.

The MASTER: Does the 33.6 cents include the extras to the contractor?

WITNESS: No, sir; that 33.6 was the straight contract work.

The MASTER: Straight contract work.

WITNESS: Yes, sir.

The MASTER: And the extras to the contractor and such work as you yourself did?

WITNESS: That is right.

The MASTER: Such charges as the Company itself incurred in addition to that are included in this other item?

WITNESS: Yes, sir. Those charges incurred by the Company would include the transportation of the contractor's grading outfits and his men and his supplies, and it would also cover whatever might be paid for overhaul, which has been shown as a separate item as paid to the contractor.

Q. But if, after the contractor got through, the Company put a force of its own men in there to clean out a cut, would any such charges be included in your column of total charges in this exhibit?

A. Not if it involved the movement of yardage; that is, yardage which had been measured and returned, or included in my valuation in some other way.

Q. Yes.

A. As I understand Mr. Morgan's testimony, this 10½ cents, so-called constant, covers the same items, which he has testified amount to about a cent and a half, if I understand his testimony correctly.

Attorney General YOUNG: Didn't he say about 4 cents?

WITNESS: I think he said a cent and a half.

Mr. HOW: He really said he didn't know.

Attorney General YOUNG: I think he said it would be fully covered by about 4 cents a yard. That is my recollection I am not certain about that. It is immaterial, we can see what was said by referring to the record.

WITNESS: My recollection is he said between two and three cents, and afterwards said about a cent and a half.

Mr. HOW: In the Northern Pacific case he said he didn't know.

WITNESS: I am referring to the Northern Pacific case, Mr. How.

Attorney General YOUNG: I am speaking about this case.

WITNESS: I didn't know that he said it in our case.

Attorney General YOUNG: Yes I think he did, I think he said 4 cents.

Q. Now, have you anything further in mind that you desire to say about this amended Ex. 4 before we pass from it?

A. No, I haven't anything in mind, but if there is anything more I can say to make it perfectly clear to everyone, I would like to do so. I do want to say that all these changes we have made, we have a complete record of just what has been done and would be glad to go over it with any one, from Mr. Morgan's office or otherwise, to show just what changes have been made and why.

Q. Now, I wish you would take up for a few moments something in connection with the subject of ties. Have you analyzed the difference between the State's estimate and the Railroad's estimate?

A. Yes, sir.

Q. Will you proceed to analyze that difference?

A. The difference between the Railway estimate, $5,638,-968.70 and the State's estimate $4,462,522.80, is due altogether to a difference in price, the quantities being practically the same in both estimates, the average price used by the Railway being 70.5 cents per tie, and by the State 55.5 cents. This is largely accounted for by the fact that Mr. Morgan has tried to use prices prevailing in 1907, whereas, it is shown in our testimony we have tried to look ahead four years so as to strike an average price for all the ties required during the eight-year reproduction period, basing this on the advances that have taken place during the past two years. The average price we have used on this supposition is justified by the sworn reports to the Railroad & Warehouse Commission, as shown on Ex. C-12—Mr. Morgan provided the same is extended to include the 1908 report.

Mr. HOLDEN: Now, just a moment. Will your Honor turn to that Ex. C-12, if you have it here, of Mr. Morgan? If not I can furnish you with my copy.

The MASTER: I have it.

WITNESS: These reports to the Railroad & Warehouse Commission show the following general average prices for all classes of ties for each year, as follows: 1902, general average price at distributing points, for all classes of ties, 36.2 cents; 1903, 37.4 cents; 1904, 37.6 cents; 1905, 39.9 cents; 1906 39.8 cents; 1907, 46.3 cents. That is as far as Mr. Morgan's exhibit went. For 1908, the general average price at distributing points for all classes of ties, as shown by the same sworn report to the Railroad & Warehouse Commission, is 57.8 cents. This shows an increase in six years of 21.6 cents per tie, or an average increase per year of 3.6 cents.

Q. Now, just a minute. You have stated the average increase per year, but will you state the actual increase from 1907 to 1908, as shown by the sworn report on file with the Commission?

A. It would be 11.5 cents.

Q. In one year?

A. In one year.

Attorney General YOUNG: The average price.

Q. You have taken this 57.8 cents from the same sworn reports on file with the Commission that Mr. Morgan bases his exhibit on, only he stopped at 1907 when you added 1908?

A. Yes, sir. I stated the increase in six years (that is, from 1902 to 1908), had been, as shown by these reports, 21.6 cents per tie. This makes an average increase per year of 3.6 cents per tie. At this rate the average price per tie of all classes, four years from 1908 would be four times 3.6 cents, added to 57.8 cents which produces 72.2 cents, as the probable average price of all classes of ties at the distributing point four years from 1908.

Q. Now, so there may be no misunderstanding, just what do the prices shown in your sworn reports to the Commission for ties include and what character of ties are involved?

A. They cover the ties used for renewal purposes, as delivered on the right-of-way, by or under tie circulars or by contractors, provided such ties are required for renewal. They do not include the peeling, the inspecting and the loading.

Q. Nor the cost of transportation?

A. No, sir; they are simply at the distributing point.

Q. Now, while we are on Ex. C-12 Morgan, I desire to call your attention to the next to the bottom line of that exhibit where a comparison of prices for ties shown in United States Department of Agriculture forest service, circular 124, number and value of ties purchased by steam railroads in the United States in 1906, is shown, and hand you the circular of the government showing prices of cross-ties purchased in 1907 and ask you if you will look at that table and see what the average price for oak ties was in 1907.

A. 53 cents.

Q. As against 51 cents in 1906?

A. Yes.

Q. Now, cedar ties.

A. 50 cents.

Q. Tamarack.

A. 49 cents.

Q. As against 35 cents in 1906?

A. Yes.

Q. Pine ties.

A. 41 cents for white pine.

Q. There are several kinds of pine ties shown on the circular in your hand; what was the average price for western pine?

A. 50 cents.

Q. What is the average price of all other ties?

A. 46 cents.

Q. And what is the general average of all ties?

A. 54 cents. That includes sawed and hewed.

Q. Well, the 54 cents is the general average of sawed ties; what is the general average of hewed ties?

A. 50 cents.

Q. And the general average of all kinds of ties as shown by that circular is—

A. 51 cents. My first statement of 54 cents should have been for sawed; 54 for sawed, 50 for hewed, and 51 as an average of both classes.

Q. Mr. Morgan, in this exhibit, has shown the same price returned by the Great Northern Company to the Railroad Commission for each of the years in question, for cedar, tamarack and pine ties; are you able to state whether that is a correct representation of the facts as shown on the reports on file with the Commission or not?

A. The report as rendered to the Commission gives a price for cedar, tamarack and pine, but does not state that that is the price of each. That is an average price for all of the cedar, tamarack and pine.

Q. Now, have you examined the reports for each of the years to determine whether that is the way in which the prices were reported as an average price for cedar, tamarack and pine, instead of a separate price for each kind?

A. Yes, sir; that is true. They are all reported in the same way, an average price for the three different classes together.

Q. Now, on the subject of protection work, riprap and retaining wall, the difference between the Railway estimate and the State estimate is due to what, as you find it?

A. It is due to Mr. Morgan using $1.25 per cubic yard for riprap as against our $2 per cubic yard. The average contract price for riprap in place, as paid to contractors, is $1.50 per cubic yard, to which must be added transportation charges for the stone from the source of supply to the place of use, as well as transportation charges of men, tools and supplies, which we estimated at 50 cents per yard, making a total price of $2 per yard, as against Mr. Morgan's $1.25.

Q. Now, you say the average contract price for riprap in place is $1.50 cents per cubic yard; do you mean that that is the current, going price for that class of work?

A. Yes, sir.

Q. And how do you know that fact?

A. From contracts that we are letting and have let for a few years past.

Q. And when you let a contract for $1.50 per cubic yard for riprap in place, what is the provision as to bringing the stone from the source of supply to the place of use, or the transportation of men, tools and supplies?

A. That has to be paid for either by the Railway Company or as an extra charge against the riprap.

Q. And under those conditions, what is your judgment as to $1.25 being a fair price per cubic yard for such riprap as is embraced in your exhibits in the state of Minnesota?

A. It is not sufficient.

Q. Now, the subject of bridges, trestles and culverts: There is some difference between the State and the Railroad Company on that. Have you analyzed the differences so that you can discuss them before the Master now?

A. Yes, sir.

Q. Proceed, please.

A. We find the total estimate of bridges and culverts as returned by the State, is $5,141,781.96; and by the Railway Company $6,814,201, being a difference of $1,672,419.04. This difference is made up as follows: for steel railway bridges, $1,065,703.99; for steel highway bridges, $360,037.81; for wooden bridges, $201,411.26; for culverts, $45,265.98. The difference—

Q. Before leaving that, the stone-arch bridge in Minneapolis, I see you have no stone bridges in the four classes you have.

A. No.

Q. How is that shown?

A. The stone-arch bridge in Minneapolis is included under steel railway bridges in both the State and my own, so as not to make a separate class.

Q. Now, then, you are apart $1,065,703.99 on steel railway bridges; wherein does that difference arise?

A. The difference in steel railway bridges is accounted for as follows: Thirteen bridges built prior to June 30, 1907, omitted by the State, $164,106; fourteen bridges built between June 30, 1907, and June 30, 1908, $368,710. It is proper to add that Mr. Morgan's estimate was up to June 30, 1907, and the Railway estimate is up to June 30, 1908. Then 14 bridges requiring expensive foundation work, for which the State has apparently not made allowance, amounting to $432,448; due to minor differences in unit prices used, $100,499.99. These four items added amount to $1,065,703.99, which is the difference.

Q. Now, then, if I understand you, there were 13 steel railway bridges that were in use and operation prior to June 30,

1907, the date down to which Mr. Morgan brought his figures, that he wholly omitted.

A. Yes, sir.

Q. Now, then, there are 14 more bridges, built between June 30, 1907, and June 30, 1908, which he does not purport to include. I wish you would explain to the Master, on the third item of 14 bridges requiring expensive foundation work, just what you mean and why you believe and claim that the Railroad Company should be allowed the $442,448 shown in your figures.

A. I believe this because in Mr. Morgan's estimate for all of the steel bridges, he has used unit prices for the amount of masonry and the amount of steel, and made no distinction, or very little if any, between these unit prices whether the bridge came on comparatively high and dry ground or whether it was at a point requiring expensive foundation, such as a bridge across the Mississippi river. It would appear from checking his estimates for each of these bridges with ours he has not taken into account this expensive foundation work.

Q. Well, just what do you mean by expensive foundation work?

A. Putting in the cofferdams or other work necessary to start the foundations of bridges that come across important streams.

Q. And in case of a bridge across a highway where the pier rests on a city street, dry ground, do you mean to say that he has allowed the same unit prices as in the case of a bridge across a swift-running stream where the pier rests in the middle of the stream?

A. I understand he has.

Q. Now, you show 14 bridges requiring expensive foundation work; to what extent, in making up your figures there, have you given individual consideration to each of those 14 bridges?

A. I have taken each one by itself, and in addition to the

unit prices for the concrete, masonry and steel, have applied the necessary amount to put in the foundation before the concrete or masonry could be started, such foundation consisting of cofferdams or piling, crib-work, whatever is necessary under the masonry to secure proper foundation.

Q. Now, have you the details and figures upon which not only that computation has been made for those 14 bridges, but all of the others, so that they can be examined and checked by any one, if desired?

A. Yes, sir; we have each bridge in detail.

Q. Have you the 13 bridges which you say were omitted from Mr. Morgan's figures, separately shown so that they can be checked if desired?

A. Yes, sir.

Q. And that is true of the 14 bridges built between June, 1907, and June, 1908?

A. It is.

Q. Now, the difference in steel highway bridges, amounting to $360,037.81, is accounted for how?

A. It is accounted for as follows: Four bridges built by the city of Minneapolis, which the Railway has included in its valuation, but have been omitted by the State, $84,813.

Q. Now, will you just state why you have included those in your valuation?

A. I have included them because the maintenance of those bridges now devolves upon the Railway Company, and the Railway Company will have to rebuild them whenever that becomes necessary, and in a reproduction scheme as of the present time, we would have to put them in.

Q. Are they bridges in actual use by the Railroad for the carrying of its tracks?

A. No, these are street bridges over the track.

Q. Oh, yes.

A. They are in use as such street bridges.

Q. And at the present time, and for some time in the past, you have been required to maintain them?

A. Yes, sir.

Q. Now, you have three other bridges shown in your notes?

A. There are three bridges built or improved between June 30, 1907, and June 30, 1908, amounting to $135,962.60.

Q. The balance of the difference between you on steel highway bridges is $139,262.21, which arises out of a difference in unit prices?

A. Yes, sir.

Q The difference in wooden bridges is accounted for how?

A. By the Kelly Lake to Fermoy line bridges, not estimated by the State, because the line was not completed at the date of their estimate, $30,950; and differences due to unit prices used, $170,461.26, making a total of $201,411.26.

Q. Now, the difference in culverts is accounted for how?

A. Is accounted for as follows: Kelly Lake-Fermoy line, culverts not estimated by the State, because the line was not completed June 30, 1907, $6,900; and differences due to unit prices used $38,365.98, making a total of $45,265.98.

Q. Now, on the subject of freight on construction material, Mr. Morgan, on page 1433 (transcript), comments upon certain differences in the amounts shown in the railroad report to him of June 30, 1906, and in your Exhibit No. 2, filed in this case as of June 30, 1908. In the first report of 1906, the freight item was $4,364,769, and in your Ex. No. 2 it was $1,700,043. Will you explain how that difference arose in your two statements?

A. This difference in our two statements is accounted for by the fact that Mr. Morgan did not issue any instructions as to what classes of construction material he intended to have freight charges shown on at the time reports were called for from all of the railways, covering various items that entered into the valuation. We assumed, in returning these reports of 1906, that freight charges should be shown on all classes of construction

material, including bridge material, building material, masonry, riprap, etc., as well as track material, whereas, in the 1908 estimate (which is our Ex. No. 2) we have confined these freight charges to track material; that is, to ties, rails, track fastenings, frogs and switches, so as to agree with the way Mr. Morgan was making up his estimate.

Q. Now, do I understand that in Mr. Morgan's estimates A and B, on the Great Northern cost of reproduction, he confined his freight charges to these track materials?

A. Yes, sir.

Q. And you followed that plan in making up your Ex. 2?

A. Yes, sir.

Q. And on other classes of material, such as building material, in your 1906 figure you showed freight charges separately also, but in your 1908 exhibit the cost of transportation was figured into the unit price?

A. Yes, sir; figured into the unit price or into the total cost of whatever structure we were considering. It is put in as a part of the structure itself.

Q. So then, it is not a fair inference to say that you have reduced your freight charges from $4,364,000 to $1,689,000?

A. No, that isn't fair.

Q. Now, returning for a minute to the exhibits, have you revised your Ex. No. 6, which is entitled Actual Cost of Ballasting Lines Constructed 1901 to 1908, which was offered as a part of your direct examination?

A. Yes, sir; we have revised and corrected this Ex. No. 6.

Q. Now, without repeating any testimony are the facts and circumstances to which you have testified in relation to the circumstances and reasons for revising your Ex. No. 4 substantially the same as resulted in the revision of your Ex. No. 6?

A. It is partly the same, but should have a separate explanation.

Q. Well, make it then, if you will.

A. Following Mr. Morgan's criticism of this exhibit, we started a very careful checking and analysis of the ballasting charges and the ballasting yardage on all of the lines shown in this exhibit. This work of checking these charges and this yardage has also been under way by the accountants of the Interstate Commerce Commission for the same purpose, so that we have had the benefit of what they have been doing as well as what we have done ourselves. Mr. Morgan's criticism was that in some instances, notably the Brookston to Ellis line, we did not include sufficient yardage. Naturally a low yardage, divided into fixed charges, would produce a higher unit price. So that we have gone through each one of these lines for the correct yardage, wherever it was possible to make any corrections, to get at the actual facts in the matter as well as the actual charges, to be sure that the charges and the yardage for ballasting agreed, and the result of that is a corrected Ex. No. 6.

Mr. HOLDEN: I desire to offer in evidence "Ex. 6 Corrected."

Q. Now, will you proceed?

A. It will be remembered that Mr. Morgan criticised the charges on some of the lines as between track-laying and surfacing and ballasting, claiming that in some instances charges which appeared in the construction ledger as against track-laying and surfacing in his opinion should have been against ballasting. We found that there were some instances of that kind; so that, in making up this new exhibit No. 6. that has been taken into account as well as the other matters which I spoke of before. And I desire to say as to this Ex. 6 that the changes which we have made are all of record so that they can be explained fully to any one who desires to go into it.

Q. Now, on the first line shown on the exhibit, Brookston to Ellis, the mileage remains the same as in the former Ex. 6?

A. Yes, sir.

Q. The yardage, the cubic yards of ballast, in the first exhibit were 143,100; you now show 262,407 cubic yards of ballast placed on that line. That is correct, is it?

A. Yes, sir; that is correct.

Q. There have been corresponding changes in each of the different columns showing different kinds of charges for the work on that line, with the result (if you will state it) of what difference between the charges formerly shown and the present charges in the corrected exhibit?

A. The former Ex. No. 6, for this line, Brookston to Ellis, showed a total cost per cubic yard for ballast of 78 cents. This corrected Ex. No. 6 shows a total cost per yard for that line of 45.6 cents.

Q. Can you state, from anything you have before you now, the reasons for that reduction?

A. It is due to the increase in yardage from 143,100 cubic yards to 262,407 cubic yards, and to an increase in the total charges from $111,673 to $119,469.02.

Q. In other words, the considerable increase in the number of yards of ballast has given a much larger divisor?

A. Yes, sir; which produces a much lower quotient.

Q. Now, then, have you had each of the lines shown on this exhibit examined for the purpose of checking the figures shown in your former Ex. No. 6 and verifying and correcting where necessary each of those figures?

A. Yes, sir; we have, and we have found it necessary to make some changes in the yardage in two other lines.

Q. Indicate which.

A. Namely, Midway to Molson, the cubic yards of ballast has been changed from 87,079 to 87,279; and the line from Armington to Laurel has been changed from 559,419 cubic yards to 543 018 cubic yards.

Q. Now, without going into all of the details, because it perhaps is not necessary at this time, will you state what difference, after this revision, there appears in the average price of ballast paid on the ballasting of these lines?

A. As a total you mean?

Q. Yes.

A. The total cost per cubic yard for ballasting on all of the lines shown on former Ex. 6 was 66.3 cents per cubic yard, and on the amended Ex. 6 it is 66.7 cents.

Q. An increase of .4 of a cent per cubic yard?

A. Yes, sir.

Attorney General YOUNG: The increase was on lines outside the state?

WITNESS: Yes, sir; that is true. That is true, but the same method of correction was followed through on all of them, and producing that result.

Attorney General YOUNG: The only lines criticised by Mr. Morgan, however, were those within the state.

Q. I think the only one he spoke about was the Brookston to Ellis line, was it not?

A. I think, so far as ballasting is concerned; yes, sir.

Q. Now, then, have you made a corresponding revision of your Ex. No. 7, entitled Actual Cost of Track Laying and Surfacing, and if so will you produce it and have it marked "Corrected Ex. No. 7-Hogeland."

The exhibit was produced and so marked.

Q. In corrected Ex. No. 7, I notice some changes in the mileage in the first column.

A. Yes, sir.

Q. How are those accounted for, by any additions or by errors in measurement?

A. Not by errors in measurement but by errors in not having carefully compared the mileage and the charges in making the first exhibit.

The MASTER: Clerical errors?

WITNESS: Clerical errors; yes, sir.

Q. Now, if there are any different considerations bearing upon this exhibit than on the other two, surrounding the circumstances and methods pursued in revising this exhibit, I wish

you would state them; if not, you may indicate the important conclusions arrived at from this revision. .

A. I don't think there is any further explanation to be made of this corrected Ex. 7 than has been made of the former exhibits, corrected No. 4 and No. 6, except that, in addition to necessary corrections in total charges to track-laying and surfacing, some corrections have been made in the mileage, so as to correctly offset charges to track-laying and surfacing in the mileage which was covered by those charges. We found in some instances that some side-track or some double-track had been included in the charges, but had not been included in the miles of track laid, which did not give a correct result when dividing the total charges by the total mileage. The net result of the corrections of this Ex. No. 7 is to give 1596.74 miles of track laid as against 1565.87 in the original Ex. 7, and to give total charges of $1,383,633.41, as against $1,439,164.93 in the former Ex. 7; and the cost per mile for track-laying and surfacing of $866 per mile as against $919 in original Ex. 7. After deducting for the cost of laying 940 switches at $25 each, amounting to $23,500, we obtain a net cost per mile of track-laying and surfacing of $851 as against $904 in the former Ex. 7.

Q. Mr. Hogeland, have you prepared an exhibit showing a comparison of the Railway and State estimates, and the differences between you, and if so will you produce it and have it marked?

A. Yes, sir; I have.

Statement produced and marked "Complainants' Ex. 55-Hogeland."

Mr. HOLDEN: We offer this Exhibit 55-Hogeland.

Q. In this exhibit you show the classification of items as shown in previous exhibits, do you not?

A. Yes, sir.

Q. And in the first column you have the Railway estimate as of June 30, 1908; does that agree with your figures in your Ex. 2?

A. Yes, sir; it does.

Q. Now, the second column is the State's estimate, June 30, 1907.

A. Yes, sir; and that is a summary of the three estimates (I think they are known as Estimate A) covering the Great Northern Railway, the Minneapolis Union Railway and the Minneapolis Western Railway, so as to correctly compare the State's estimate with the Railway estimate.

Q. The third column is entitled the Differences Between the State and the Railway?

A. Yes, sir.

Q. Now, describe the fourth column.

A. On account of the State's estimate being as of June 30, 1907, and the Railway's as of June 30, 1908, as well as on account of omissions which the State's has made, such, for instance, as the bridges called attention to previously, this column four shows, as it is headed, the value of additions and improvements up to June 30, 1908, included in Railway's estimate but not included in State's estimate.

Q. And, finally, you have a brief note of explanation of the reasons for the differences?

A. Yes, sir.

Q. Now, is there any other point that you have in mind to refer to now which perhaps is not clear on the exhibit?

A. I think I should call attention to item 29, adaptation and solidification of roadbed. This is an item which Mr. Morgan included but which the Railway Company did not include; and, as it appears from Mr. Morgan's description of what this was intended to cover that it properly is included in our grading, I have included that in the State's figures under Item 2, Grading, Clearing and Grubbing; that is, I have added to the State's estimate for item 2, which was $16,673,410.24, the amount of this item 29 $3,235,022.91, making this item No. 2 in the State's estimate $19,908,433.15.

Q. Now, then, looking at the footing of the difference between you and the State's Estimate A, which amounts to $44,250,472.28, you show of that $44,250,472.28 there is $9,382,084, in your fourth column, embracing additions and improvements, not included in the State's estimate?

A. Yes, sir; that is correct.

Q. Now, you have already referred to the omission by the State's figures of certain of the bridges; the report made by the Railway Company to Mr. Morgan was as of June 30, 1906?

A. Yes, sir.

Q. What other items of improvements or additions to the property, in addition to bridges, have you in mind which Mr. Morgan has not, apparently, taken into consideration in making up his figures, as of June 30, 1907, which you included in your final figures in Ex. 2, which brought your property down to June 30, 1908? And, first, I might ask you, did Mr. Morgan call for any new report from your Company or you, covering any improvements or additions made to the property after your report of June 30, 1906, and if so, just state what.

A. He did not call for any complete report to bring the valuation up to June 30, 1907, but he did call for detached information, such as for equipment for the new passenger stations at Benson and Alexandria, the extension of Laurel avenue bridge at Minneapolis, new roundhouse, turn-table, coal-chute and cinder-pit at Jackson street, St. Paul, turn-table at Melrose, block signaling state line to Brookston, and Brookston to Arlberg. He did not ask for any additional mileage that had been constructed, or for any detailed statement bringing the valuation up to June 30, 1907.

Q. And, of course, it necessarily follows, from the date of his report, that he purposely did not cover the additions or improvements from June 30, 1907, to June 30, 1908. You have already spoken about the bridges omitted which were in existence prior to June 30, 1907?

A. Yes, sir; and that should be added to by saying that in Mr. Morgan's trip over the line, his inspection of the line, he noted practically all these bridges that had been omitted in our statement to him of June 30, 1906, but he has failed to include them in his valuation.

Q. Now, passing from bridges, what other improvements and additions were made by the Company of important amounts which you can call attention to that were omitted in Mr. Morgan's figures?

A. I want to qualify that last statement by saying that he did ask for two of the bridges, I believe, that were found to be omitted; that was bridge C-1 at Brookston, and I believe one bridge on the Fergus Falls division, not far from St. Cloud.

The MASTER: Had his attention been called to these omissions?

WITNESS: At the time?

The MASTER: Of the bridges, when he made this report.

WITNESS: Of the bridges; yes, sir; because it was clearly a clerical error in our not including those bridges in our report to him, so that both Mr. Leach who was with Mr. Morgan, and Mr. Morgan himself, made a note of those bridges, but for some reason Mr. Morgan overlooked including them in his figures. Now, as to these buildings which I am going to speak of, whether or not Mr. Morgan knew that we had put in these buildings I don't know, but he could have ascertained by asking us for a further statement of them. We had no means of knowing just what date he was going to bring his estimate up to.

Q. Until his testimony was given, and in connection with it he made his offer to permit an inspection of all the papers upon which his figures were based, you were not aware of just what data or details he had made use of?

A. No, sir.

Mr. DURMENT: Mr. Holden would it interfere here with your plan if Mr. Hogeland should give us the number of the

bridges and the appraisal section which they are on, of the 13 which he says were omitted, at this time?

WITNESS: Yes, sir; I have them right here, I have a note of them.

Attorney General YOUNG: If he will hand them to Mr. Jorgenson, he will put them right in. First let me ask you: I understood you to say that these bridges were omitted from your report to Mr. Morgan in the report of 1906.

WITNESS: Yes, sir; a part of them, at least, were omitted.

Attorney General YOUNG: So that if there is a mistake, that might account for it.

Mr. HOLDEN: Oh, I don't claim anything but a mistake; certainly nothing but a mistake.

The MASTER: Well, had his attention been called to these omitted bridges, the 13 omitted bridges, by any one?

WITNESS: Yes, sir; both Mr. Morgan and our own engineers, as they went over the road on this inspection trip noted that, and they both made the same note that here there was a bridge omitted.

Mr. HOLDEN: The Railroad Company omitted them in its report of June 30, 1906, and both the Railroad and Mr. Morgan in his inspection trip found out that fact. Now, we included them in our figures, and we simply call attention to the fact merely as an omission; I haven't anything further to call it by, that apparently Mr. Morgan's figures didn't include them.

Mr. DURMENT: Well, now, then, if you will give us the numbers and sections we can check up on that.

The MASTER: He overlooked the fact you discovered the 13 bridges in going over the road.

Mr. HOLDEN: I have tried to make plain all the differences here that I can.

The MASTER: All right.

WITNESS: You want me now to give you the section number?

Mr. DURMENT: The number of the bridge and the appraisal section. The memoranda was given counsel.

Q. Recurring to my former question as to whether improvements which had been apparently omitted, will you state some of them?

A. Improvements were made in water stations, coal stations, station buildings, miscellaneous buildings, power plants, engine houses, up to June 30, 1907, amounting to $123,350.

Mr. DURMENT: Will you let us have the items of them?

WITNESS: Yes, sir; I will give you the items of those.

Mr. DURMENT: Read them into the record.

Mr. HOLDEN: We haven't got them here.

WITNESS: We haven't got them here.

Mr. HOLDEN: I will make a statement about them.

A. (Continuing.) Shop machinery and tools were added to, during the year June 30, 1906, to June 30, 1907, to the extent of $325,000, not included by Mr. Morgan; stores and supplies on hand in Minnesota amounted to $3,166,188.64, June 30, 1907; whereas, Mr. Morgan has used $1,632,565, the figures we returned to him for June 30, 1906.

Q. Now, Mr. Hogeland, all of the details upon which these last figures you have read were compiled you have and they are open to examination, are they?

A. Yes, sir.

Attorney General YOUNG: Mr. Morgan's valuation was expressly limited to that date, was it not?

WITNESS: Yes, sir; June 30, 1907.

Mr. HOLDEN: These are prior to that date?

WITNESS: These were in that year, between June 30, 1906, and 1907.

Q. Now, what is and has been the plan for some years on the Great Northern road in the matter of authorities for expenditures for work to be done during the year, the current work of improvements and betterments throughout the system?

A. The plan for a number of years past has been to prepare an estimate and a plan which constitutes what we call an "authority" for expenditure, after it has been properly approved and authorized by the executive officers, covering each piece of improvement; for instance, a new side-track, an extension of an old side-track, a piece of double-track, a permanent bridge, permanent culvert in place of a temporary bridge or culvert, a new building in place of a smaller one or a less important one; all expenditures to additions and improvements, are covered by what is called by us an authority for expenditure.

Q. Now, does that cover not only new work, as where you build a new building where there had been none, as well as revision or reconstruction of old work?

A. Yes, sir; everything that involves an increased expenditure over what the original structure cost is covered by an authority for expenditure as well as new work. I am not speaking about construction; I am not speaking in the sense of building new lines, but new side-tracks, double-tracking, improvements of the existing railroad.

Q. And do you have reference to all of the different kinds of work which may be required in all of the different elements of the property, whether it be track or bridge—

A. Yes, sir.

Q. —or building, or shops, or what-not?

A. Yes, sir; everything that is not covered by the construction of new lines is covered under the title of authority for expenditures.

Q. Who makes these estimates?

A. They are made by the engineering department.

Q. And with what degree of care or minuteness are they made?

A. They are made as carefully as is practicable by the engineer who is located and in charge of the district affected and gone into in detail so as to arrive at as nearly a correct estimate as practicable.

Q. Now, then, after that estimate is made, what is the practice in order to procure the requisite authority to proceed with the work?

A. That has to be approved by an executive officer, and covered by what we call an "authority for expenditure" number, being a number put out in the President's office, so both the engineering and the operating and accounting officers know that the expenditure has been authorized and know to what account to charge it.

Q. Now, have you caused to be prepared an exhibit showing the estimated cost of work of the kind you have been speaking of, for the last four or five years, and also showing the actual cost of that work and the difference between the estimated cost and the actual cost and the percentage that the actual cost overran the estimated cost?

A. I have.

Mr. HOLDEN: We offer this exhibit in evidence and ask that it be marked Hogeland's Ex. 56.

Q. Now, I take it, Mr. Hogeland, that these gross figures for each year are the adding together of all of the separate estimates and authorities, bringing them into one lump sum for each year.

A. That is correct.

Q. And can you give any idea of the number of separate estimates and authorities that are probably embraced in each year's work? Of course I know you haven't figured them up.

A. No, it is many hundreds.

Q. And does it cover work all over the system?

A. Yes, sir.

Q. And if I understand the matter, for these five years the estimated cost of all kinds and conditions of work such as you have described is shown in the final figure of $25,223,738.65, whereas, the actual cost was $29,096,067.47, the difference being $3,872,328.82, the work having actually cost that amount more than the estimate, and the percentages are shown in the final column?

A. Yes, sir.

The MASTER: This is all within the state?

Mr. HOLDEN: No, it covers the whole System.

Q. Now, were any of these figures made up with any reference to (the figures constituting this exhibit) this litigation?

A. Why, no in the preparation of the authorities for expenditure they had nothing to do, of course, with this litigation.

Q. Those figures were simply made up in the current run of the Railroad's improvement work over these years 1903-1907?

A. Yes, sir; covering those five years.

Q. Now, are all of the details on which this compilation is made open for inspection?

A. Yes, sir.

Q. You said that construction work is not covered in this way; do you mean by that that work costing large sums of money, such as the building of a new line, or work of that character, are ordinarily not handled in this way?

A. Yes, the size of the amount of the expenditure would not govern, but from the fact that a piece of new line is authorized in a different manner, authorized by the board of directors and is not covered by President's authority for expenditure, is the reason for that, and these items included in these authorities for expenditure do not cover new lines constructed.

Q. Now, Mr. Morgan in his testimony made some reference to a difference in unit prices; I think it had to do with grading on our line from Willmar to Jasper, shown in your exhibit, and prices shown in reports to him by other railroads crossing the Willmar and Jasper line of the Great Northern; Mr. Morgan referred to ten or twelve crossings I think.

A. By six other railroads, I think.

Q. By six other railroads?

A. That is the way he put it.

Q. Have you any knowledge or familiarity with the condi-

tions in that part of the state where these crossings are?

A. Yes, sir; I am familiar with that.

Q. Now, how does the Great Northern's Willmar to Jasper line run?

A. It runs across the drainage, and the other lines follow the drainage, the lines that we cross, making the grading of a considerably different character.

Q. The map that stands here in the room, which is a copy of the Railroad Commissioner's rate map of Minnesota, indicates, in the lower left-hand corner the Willmar-Jasper line, running in a southwesterly direction, and all of the other lines that cross it seem to run approximately east and west; that is true, is it not?

A. Yes, sir.

Q. And your line running southwesterly, you say, runs across the drainage?

A. Runs across the drainage, necessitating heavy cuts and fills and the material being taken to a considerable extent from the cuts, means a somewhat higher priced grading material than though it is a valley line, taken pretty largely from the sides, the same as the other lines are. I think that accounts for a part of the difference, at least, between the figures which Mr. Morgan has questioned, that the other roads have used and that we have used.

Q. The other part of the difference, how do you account for?

A. Why, I think the other engineers have underestimated it.

Q. Now, on the subject of ballasting, Mr. Hogeland, something was said in Mr. Morgan's testimony about it being improper to allow anything for surfacing track in figuring the cost of reproduction where the lines are now ballasted. What can you say as to the actual experience and practice of railroads in that regard?

A. It is pretty generally the practice to surface up the line, at least, to a certain extent—a considerable extent—even

though ballasting is to follow pretty closely afterwards; and the reason for that is to enable construction trains to be handled more economically, keeping the trains hauling material for track-laying to the front out of the way of ballast trains; in that way, handling the ballasting and the handling of the construction trains with construction material more economically.

Q. Now, surfacing, I think, as has already been explained, is the piling up of earth?

A. It is the casting in of earth from the shoulders of the roadbed, to partially tamp and fill in between the ties, so as to give the track more stability than exists in what we call skeleton track where this surfacing is not done.

Q. Well, now, would it be possible to operate over a skeleton track your construction trains, pushing the ties and steel to the front, without surfacing to a considerable degree?

A. Oh, it is possible, but it is not very economical.

Q. Why?

A. Because your track is in a very unstable condition; it is out of surface, somewhat out of line, the ties not being filled in between are liable to bunch, and it makes a comparatively unsafe track to operate for any length of time. When I say to operate I mean to haul your construction material over for any length of time at any speed, or exceedingly heavy loads, in advance of doing a certain amount of surfacing.

Q. Well, now, can you state, from your knowledge of railway construction in the recent past, any cases where track has been substantially surfaced although the ballasting work was planned to follow as rapidly upon the track-laying as it could be done?

A. The most recent instance is the Milwaukee & St. Paul extension to the Coast.

Q. Now, just state the fact about that.

A. They have surfaced up practically all of their line by casting in from the side, even though they were to follow, and they

are following, as rapidly as possible with the ballasting. The line has been surfaced practically all the distance from the side; and that was true in the construction of the entire Great Northern System. I speak now of the Coast line. I should say of the Coast line from Havre, Montana, to Puget Sound, it was all surfaced up immediately after track-laying for the very purpose that I have mentioned, and ballasting followed along as soon thereafter as possible.

Q. Speaking about the Milwaukee railroad, the construction on their Coast extension, Mr. Morgan had something to say about his understanding or information as to the time they had taken for building their line through to the Coast; have you been on portions of that new line?

A. Yes, sir; and I have crossed it at a number of points where our lines cross it.

Q. Have you taken pains to inform yourself as to the facts concerning their construction and the time that they have been at work and the present condition of that line?

A. Yes, sir.

Q. Well, now, do you know from your inquiries, when they first began their work and just what work they began with? I wish you would state briefly what you know about that extension.

A. I am speaking now of their Pacific Coast extension from Mobridge to Seattle and Tacoma. They began exploratory surveys in 1902 and actual instrumental surveys in 1905; purchases of terminal property at Tacoma and Seattle in July, 1904; purchases of right-of-way in South Dakota and Montana in March, 1906; actual grading commenced in South Dakota and Montana in April, 1906; rails were connected, making a continuous line to the Coast, March 29, 1909. They do not state now just when the line will be opened for complete through passenger service, but it is open for both passenger and freight service, to a limited extent, at the present time.

Q. Have you made inquiries to determine when it is expected that that extension will be in a completed condition?

A. Yes, sir; and they state they are unable to answer.

Q. Is it claimed, from your knowledge of it,—are you able to say whether that line is in any sense a completed railroad at the present time?

A. No, so far as my observation goes and my inquiries, is it not.

Q. There is no through passenger service contemplated on the line in the near future, is there?

A. Well. I cannot say whether it is contemplated; I only know their engineers say they can't say when it will be ready for through passenger service.

Q. Mr. Hill in his testimony mentioned the construction of the Pacific Extension of the Great Northern and the earnings upon it in its early years. Please describe, in general terms, the route of that Extension, and mention some of the principal places through which it passes and others through which it is reached.

A. The Pacific Extension of the Great Northern begins at Havre, in central Montana, and runs almost directly west through Montana, Idaho and Washington. It passes through Spokane, and at Everett on the Coast, on Puget Sound, connects with a north-and-south line of railway connecting Seattle with Vancouver, passing through Bellingham, Blaine, Everett and New Westminster,—all important traffic centers. This north-and-south line was built before the Pacific Extension was built, so that upon reaching Everett whatever business could be derived from those coast cities was available. Seattle especially had become an important traffic center at that time. The Great Northern was at that time the shortest line to Puget Sound points, and to Spokane it was a little shorter than the Northern Pacific.

Q. What was the condition of Spokane as a commercial center by the time the Pacific Extension reached it?

A. It was an important center.

Q. Was that true of the other points on Puget Sound and near there which you have named?

A. Yes, sir; they were all important traffic centers at that time.

Q. Now, finally, Mr. Hogeland, something has been said, in one of your former examinations, about an estimate that was offered in the Steenerson rate case, and your attention was directed to an item of track-laying in that estimate, and I think it has been intimated that the estimate referred to was submitted to you at some time, either in the Steenerson case or in some other case. Your attention has been called to that matter, and if you have any comments to make upon that Steenerson exhibit, I wish you would make them. In fact, I think General Young, at some time, asked you to consider that matter, if I recall it.

A. I haven't been able to find, from our records, any data bearing on that at all, but I have read the testimony. I have read the testimony and it appears that in that estimate a unit price of $400 per mile was used for track-laying and surfacing. That evidently was intended to cover the contract price for track-laying and surfacing, because in contracts at about that time, that was a ruling price for track-laying and surfacing. Three contracts which I have taken out and examined show as follows: Contract No. 52, in January 1887, covering track-laying and surfacing, Minot to Great Falls, $500 per mile; contract 182, August, 1890, Pacific Junction to summit of Rocky mountains, $375 per mile; contract 584, August, 1892, Thief River Falls to Red Lake Falls, in Minnesota, $400 per mile. They covered what was paid to the contractor for track-laying and surfacing, did not include the handling of the material in the material yard, the train service, handling the material to the front or handling any track-laying machine or any transportation of men and supplies; simply what was paid to the

contractor for straight track-laying and surfacing, the Railway Company furnishing the equipment.

Q. Did it cover any item of repairs of equipment?

A. No, sir; that the Railway Company assumed.

Q. Now, is that your explanation of it, in part, at least, of the difference between your figures on your Ex. No. 7 as corrected, and that exhibit in the Steenerson case? There may be other reasons for the differences, such perhaps as differences in the prices of labor?

A. Yes, there naturally would be, but taking these contracts at about the time of this hearing in the Steenerson case, it would appear that that price used, $400 per mile, was intended to cover the contract work only, because it agrees so closely with prices paid contractors for simply the track-laying and surfacing,—the contract work.

Q. These contracts you speak of have provisions requiring the Railroad Company to undertake the cost of these other items, do they not?

A. Yes, sir; the Railway Company handles the material in the material yard, which is a necessary part of track-laying, a necessary charge, and furnishes the train service; it furnishes transportation for the men, tools and supplies, and attends to the repairs of the equipment.

Q. They contracting with the contractor to furnish all of these items, and, on his part, in consideration of that, he agrees to lay the track and surface it for that sum per mile?

A. Yes, sir.

Q. Now, those contracts you have reference to are in your possession and open to reference and examination, if desired, are they not?

A. They are.

By Attorney General YOUNG:

Q. I would like to ask Mr. Hogeland whether he has sufficiently identified the testimony in the Steenerson case, as it

appears in the transcript in the possession of the Railroad & Warehouse Commission, so that such portions of it as are pertinent may be considered by the Master in this case if he desires.

A. I have not given it very careful consideration. You asked me about this track-laying and surfacing, and I looked up that feature.

Q. That is not what I asked you, Mr. Hogeland. I asked you to look up whether what purported to be your testimony in the Steenerson case as it appeared in the transcript up there was correct.

A. Do you mean me to look it up now?

Q. No, I asked you to do it at that time.

A. I didn't understand that. I thought you asked me about this track-laying and surfacing.

Attorney General YOUNG: That is a certified copy, we can use that if necessary, but we don't care to put it all in. I had part of it taken off showing your testimony. I would like to have the privilege of using that without introducing the whole transcript, I don't want to burden the record.

Mr. HOLDEN: I think we have a printed copy of the record in the Steenerson case, and I think it is a fact that there is some reference there in that matter to Mr. Hogeland while he was on the stand, and I think it may be said that it is fairly inferable that he approved Mr. Shepard's figure, and this explanation he has made here is to show the basis upon which he understood the matter, that it included track-laying and surfacing, but did not include the other items.

Attorney General YOUNG: We want to introduce that testimony and let it speak for itself.

Mr. HOLDEN: You needn't have it certified; a copy of the printed record will be sufficient.

Attorney General YOUNG: That record shows what was included in it.

Mr. HOLDEN: Certainly.

Attorney General YOUNG: It was an estimate of the cost of the reproduction of the road.

Mr. HOW: Put it in, will you?

Attorney General YOUNG: Yes.

Mr. HOW: If you are going to use it, I want to see it, myself, of course.

By Mr. DURMENT:

Q. You have handed us a list of the 13 missing bridges; that is right, is it?

A. Yes, I think that is all right.

Q. Now, will you have prepared a statement of your estimates for these 15 bridges that you have included in your estimate and let us have it Monday morning?

A. Yes, we can take it right off now.

Adjourned until Monday, September 20th, at 2 o'clock P. M.

Federal Building, St. Paul, Minn., September 20, 1909. The hearing was resumed at 2 P. M.

ALBERT H. HOGELAND,

recalled on behalf of Complainants, testified:

CROSS-EXAMINATION.

By Attorney General YOUNG:

Q Your last testimony, Mr. Hogeland, consisted mainly of a discussion of certain differences which exist between your former testimony and the testimony given by Mr. Morgan, who until recently was in the employ of the Commission, and both your testimony and Mr. Morgan's testimony that is in controversy relate to the alleged cost of reproducing the Great Northern railroad in this state, does it not?

A. Yes, sir; to the cost of reproducing the line in the state.

Q. There doesn't appear to be any conflict between you on any question which relates to the present value of the road or to its original cost, there is no such subject discussed, as I understand it, in the discrepancies which you attempted to point out between your testimony and that of Mr. Morgan, it is confined exclusively to the cost of reproduction?

A. No, the whole testimony relates to the cost of reproduction.

Q. And the items of difference cover grading quantities as well as unit prices of grading, quantities and unit prices of ballasting, track-laying and surfacing, also the unit prices of ties, rails and equipment and cost of transportation employed in construction; it relates I believe, to all those subjects?

A. Yes, but I think you included some things which we substantially agree on. That would be the total amount of ballasting, the total amount of ties, the total tonnage of rail.

Q. I said the unit prices of ties?

A. I thought you applied quantities and not prices to all of

them. We don't differ so much on quantities as we do on prices.

Q. There is no conflict, between you, as I understand it, as to the quantities of ties, rail or equipment?

A. No, sir; I believe not.

Q. But you do differ in your prices to some extent?

A. I think very little on equipment.

Q. And there is no controversy between you as to transportation that was necessary in construction, but there is a difference between you in your claiming the right to charge tariff rates and Mr. Morgan claiming that that transportation ought to be put in at cost; is that true?

A. Yes, I think that is true.

Mr. HOW: That is objected to. That is not the testimony, and we don't want to be bound here by counsel stating what the testimony is, because that is not the testimony. Mr. Hogeland has not taken the position that he is entitled to charge tariff rates as opposed to cost. His position is that tariff rates represent the cost, and Mr. Morgan says that construction rates represent cost. Now, I don't want the words put into Mr. Hogeland's mouth that Mr. Morgan contends for cost and Mr. Hogeland for tariff rates regardless of actual cost.

Q. Well, do you or do you not, Mr. Hogeland, contend for tariff rates on all transportation used in construction?

A. I contend for tariff rates.

Q. Yes, and Mr. Morgan in that respect does not agree with you. He claims the tariff rates are too high?

A. I think that is true, yes.

The MASTER: What do you mean by tariff rates?

WITNESS: The rates as charged for commercial business.

The MASTER: Charged by any road that is apt to be doing that work?

WITNESS: Yes, sir.

The MASTER: What your road would charge for performing

a like service or what any other road would charge for performing a like service?

WITNESS: Yes, sir.

Attorney General YOUNG: No, I am afraid that isn't exactly correct, is it?

WITNESS: I think it is.

Q. Let me ask this: the price you charge for the transportation that is used in construction is the same price that you charge commercially for the transportation of the same class of materials, is it not?

A. Yes, sir; and the same as we would charge another road if we were transporting that same material.

Q. On the transportation of men you have charged full tariff rates for transportation?

A. Yes, sir.

Q. And in everything you transport in connection with the construction you charge full tariff commercial rates?

A. Yes, sir; it is tariff rates.

Q. Now, in answering the Master's question you seemed to say that you charge for transportation used in construction the same price as other companies charge for transportation used in construction; you didn't so intend to answer, did you?

A. I didn't understand his question that way.

Attorney General YOUNG: Isn't that what the Master meant?

The MASTER: Well, what would generally be charged. When I spoke of other companies I had in mind what would be generally charged by other companies for like service.

Attorney General YOUNG: Yes, commercial rates.

The MASTER: Yes, commercial rates.

WITNESS: That is right.

The MASTER: That is the way I intended to be understood. When I spoke of other railroads, I meant generally commercial rates.

Attorney General YOUNG: I thought the Master meant other railroads engaged in construction.

The MASTER: No, I had in mind that perhaps a very considerable part of this material would be transported to certain points by other roads in order to reach the place of distribution, and that that was what he had in mind would be charged commercially.

Attorney General YOUNG: Yes, some of it might be transported, by other companies and much of it by the Company itself.

Q. Now, directing your attention for a moment to the question of grading, the materials used in grading are classified on your road into earth, hard-pan, loose rock and solid rock?

A. Yes, sir.

Q. That is not the classification, is it, that is used on all other roads?

A. Not on all other roads, but generally so.

Q. Is there any other road in the state of Minnesota that uses the classification "hard-pan"?

A. Yes, sir.

Q. Which one?

A. The Northern Pacific, the Soo,—I can't say as to others.

Q. And you want to be understood as testifying that in their estimate of the cost of grading made to the State they classified the material in that way?

A. No, sir; I had reference to their contract work which they now have in hand.

Q. That they are so classifying their work at the present time—

A. Yes, sir.

Q. —on contract work being done. That would be three roads out of the number that are involved in this litigation. In the case of the other roads, the classification is of earth, loose rock and solid rock?

A. I cannot say as to that. I mentioned those two because I had knowledge of those.

Q. Well, you do know, do you not, that in making his estimate, Mr. Morgan, the engineer who was in the employ of the Railway Commission, adopted the classification used by the majority of the roads and divided the material into three classes—earth, loose rock and solid rock?

A. I know he divided it that way, but whether he used the practice of the majority of roads, I couldn't say.

Q. And you do know, do you not, that in his unit prices upon the subject of moving earth entering into the grades he allowed a better unit price than what would be applied to earth alone in a classification where hard-pan was employed to designate a part of the earth, so that allowance was made for your hardpan classification in that way?

A. He may have intended to do that, but I don't think he has done it.

Q. When you said, in your testimony last week, that Mr. Morgan had made no allowance for hard-pan, you conveyed the impression to me, and I am inclined to think you did with the Master, that all of the material which you had classified as hard-pan was eliminated from Mr. Morgan's estimate; that is not true, is it?

A. The quantities have been eliminated, but I think he said in his testimony that he intended his price for earth to cover whatever proportion of hard-pan there would be.

Q. Yes, and the quantities of earth which he returned included hard-pan in cases where there was any?

A. I suppose he intended it that way.

Q. State, Mr. Hogeland, what you mean by hard-pan, how you distinguish hard-pan from the classification of earth.

A. It is material which is not loose rock or solid rock, but which cannot, in the opinion of the chief engineer, be reasonably plowed. That is the usual definition in specifications covering hard-pan.

Q. And why couldn't it be reasonably plowed?

A. Because of its own inherent hardness.

The MASTER: Loosened by pick, is it?

WITNESS: Yes, sir; or it may be loosened by powder.

Q. Is that class of earth encountered all over this state in construction work, or is it found only in certain localities?

A. It is found pretty generally in excavations of considerable depth.

Q. It is what is popularly known as hard-pan in reference—

A. Yes, sir; and sometimes called cemented gravel.

Q. But you did not mean by your testimony that Mr. Morgan took the yardage classed as hard-pan and eliminated it entirely from his estimate of the quantity?

A. No, sir; I didn't intend it that way. I simply meant that he didn't use a hard-pan classification.

Q. Yes, that is all right. But the quantities, so far as they were concerned, were included in his other classification?

A. Yes, sir; I think he intended to include all the quantities he thought we were entitled to, including hard-pan.

Q. Now, in ascertaining the quantity of material in a railroad grade, where the records of the Company do not disclose the quantity, it is usually ascertained by a profile estimate?

A. Yes, sir; that is usual.

Q. There are only two ways, as I understand it, in which material can be placed in a grade; first, in original construction, which would be known as the contractor's quantity, and, second, by work done under authority of the president, or other executive officer of the road, and designated as president's authority for expenditure?

A. That would apply to recent construction, but would not apply to all of our lines in Minnesota.

Q. Well, it probably applied at the time the roads were built, but you haven't got the records, you mean?

A. No, the practice of making these so-called authorities

for expenditure has only been in existence for a period of ten or twelve years, so that that practice would not cover the older lines.

Q. In reference to the older lines, then, your records wouldn't show the quantity of material in the grade, and the quantity would have to be estimated by profile method, even though you had the amount paid contractor of record?

A. No, the only thing that I said in your question didn't apply was the term "authorities for expenditure." We have a large amount of records of material put into embankments or the roadbed that are not covered by "authorities for expenditure," because that practice started at comparatively a recent time.

Q. Well, as I understand you, then, this president's-authority-for-expenditure method is merely a recent substitute for a method which prevailed before and which prior to the adoption of this method was shown upon your books in another form; is that correct?

A. Yes, sir; that is practically correct.

Q. Under what form would the increased yardage added to the grade after the contractor had been settled with appear, prior to the adoption of the practice of issuing president's authorization for expenditure?

A. It would appear through reports of the engineers connected with the work, or by the superintendent reporting the output of steam-shovels or extra gangs, and where the material was placed.

Q. But, in either case, there was a report originally of the total amount of yardage in each grade, and in cases where that report and record has not been lost, it was as complete under the old method as it is under the new, was it not?

A. If the record was complete, but for many of the lines the record was not complete. I simply wanted to add that Ex. 3 explains that matter as fully as I think it probably could be

explained, just where the grading quantities were obtained from and in what way.

Q. And it simply meant this, that wherever there was a record you used that, and where there was not a complete record, you made a profile estimate; that is the proposition in a nut-shell, isn't it?

A. No, I don't think that quite expresses it.

Q. Well, will you express it?

A. We went through all of our records for each particular line, and where we could determine or had of record the quantities paid contractors on original construction, we used those, adding to that whatever had been done and was a matter of record since the line was constructed; and, in addition to that, an amount was added for material not on record.

Q. I understand that, I was going to get to that later, I am speaking now about the record part of it. Where you had a record of the work done, you took that as a veritable expression of the amount of material in the grade?

A. Where we had a reasonably complete record, I think would be a better way to put it.

Q. Well, put it either way.

A. For instance, on some of these lines where we have used a profile estimate, we did have a record of a considerable yardage moved on those lines but it was nowheres near a complete record, therefore it seemed to be best to use a profile estimate.

Q. Well, in cases where you used a profile estimate, you disregarded the record altogether, did you not, and made your profile estimate as the entire evidence of the quantity?

A. That is not true in every instance.

Q. Well, did you add your profile estimate to what your record showed?

A. In one line, possibly more, our records went back, very complete, to a certain date; we took the original profile estimate of that line as it was originally constructed and then

added our quantities on record from that particular date.

Q. What line was that?

A. That refers to section 38, Mississippi to Dewey Lake,—the one I had in mind particularly.

Q. Now, let us get an understanding of what profile you used. Take a case where you considered your records were so imperfect as not to be reliable, what profile did you resort to in making the estimate, was it the original profile, or was it the profile brought up to date?

A. It would be the original profile.

Q. Were there no changes in the original profile? Don't you keep the profiles up to date so as to show the lines of your grades mentioned?

A. Yes, sir; we try to.

Q. Well, didn't you use the one which showed the complete grade as it stands?

A. Not in an instance of that kind we wouldn't.

Q. Well, you seem to be answering one question while I am asking another. I am speaking about a case, Mr. Hogeland, where you resort to what you call your profile method of ascertaining the quantity in the grade; in such cases you use the profile brought up to date?

A. Why, Gene we wouldn't use a profile which showed the original quantities as well as what had been put in since, if we were using those quantities put in since as a separate item. We don't want to duplicate the quantities.

Q. Now, I think if you would answer the question as asked, we wouldn't be in conflict. There are portions of your road the quantity in the grading of which was ascertained by so-called profile estimates exclusively, are there not?

A. Yes, sir.

Q. And in such cases, what profile did you use, the original profile or the profile brought up to date?

A. That would depend on whether we had extra work of

record to add; if we used that profile estimate as the complete estimate, then we would use the correct profile brought up to date.

Q. Well, when extra work of record, as you call it, is done, don't you make the profile to conform to the grade, plus the extra work of record, so as to keep it up to date?

A. Possibly if I explain a little what kind of extra work it is necessary to correct a profile for, it might throw a little light on it.

Q. If you will do that, yes, we will be very grateful.

A. Only a part of this extra work on record would involve any changes in grade or anything that would be shown on the profile; any such thing as additional side-tracks, bridge-filling, double-tracking, grading station grounds, matters of that kind, would not show on the profile. All that would show on the profile would be a change of grade. So that very many of our profiles have no changes on since the line was constructed.

Q. But there have been changes in the quantity in the grade, so that you would have the profile estimate plus the independent quantities, the extra quantities of yardage in the grade in those cases?

A. Well, that qustion isn't clear to me.

Q. Well, you stated that certain extra work doesn't appear on the profile. I say in cases of that kind, where there is this class of extra work which is not made to appear by the profile, you take the profile estimate and add to it this extra work; that is your method of getting at the quantity, is it?

A. Yes, sir; if it wasn't shown on the profile estimate we would put in the extra quantity of record.

The MASTER: And do I understand you now that when you speak of a profile it is the grade line?

WITNESS: It shows both the ground line and the grade line.

The MASTER: Yes, the ground line and the grade line?

WITNESS: The ground line and the grade line.

The MASTER: That is, it has reference to the gradings?

WITNESS: Yes, sir.

The MASTER: And not to the width of the roadbed, or anything of that kind?

WITNESS: No, sir. So that by reading off the distance between the ground line and the grade line you could tell how much of a cut or fill there is at any particular point.

The MASTER: And if there is any material change in the grade line, then you would change the profile accordingly?

WITNESS: Exactly.

Q. So as to keep it up to date?

A. Yes, sir.

The MASTER: But this extra work on record you claim is work quite different from the work as shown by the profile; that is, the widening of roadbed, or things of that kind?

WITNESS: Yes, I claim that it would not necessarily be shown on the profile. If there were a change of grade, that should be shown on the profile, but if it were widening the bank or building a new side-track or putting in a piece of double-track, that work would not be shown on the profile. The profile simply shows a cross-section, a vertical section through the roadbed, the ground line and the grade line both showing, so as to determine where the cuttings and fills exist.

Q. But extra work of record includes everything of which you have a record, in addition to the amount paid to the original contractor?

A. Yes, sir.

Q. So that it might be included in a profile brought up to date, or it might not, depending on whether the extra work of record was work which changed the level of the grade or did not change it?

A. Yes, sir; that is true.

The MASTER: Then, extra work on record might mean profile work?

WITNESS: Yes, sir; it might be work which was shown on profile.

Q. What additional information does the profile carry with it besides the height of the grade? Doesn't it show the width, the base and top?

A. Well, necessarily the grade line is the roadbed, and the ground line is the top or bottom of the slope, depending on whether it is in a cut or fill.

Q. But the profile contains all the information necessary to compute the amount or quantity of material in the grade as shown by that profile, does it not?

A. No, sir; not unless you know the width of roadbed and the slopes used, as well as pretty generally the nature of the ground that you are building across.

Q. Well, if you started, then, to ascertain the quantity in a railroad grade which you had not yourself constructed and was not familiar with, and were furnished a profile only, you would have to have additional information?

A. Yes, sir.

Q. What?

A. You would have to know the width of roadbed at grade and the slopes used, and you should also know the general character of the ground.

Q. Where do you get that information where the record is incomplete?

A. It generally comes from personal knowledge.

Q. You have got to make a personal examination of the grade?

A. Either that or have it done.

Q. Well, by having it done, of course,—

A. By having it measured; yes, sir.

Q. —having it done is included in what I meant by doing it. Let us understand this question fully, Mr. Hogeland, if you please. Does a profile carry no information with it as to

the width of the grade or its dimensions, as a rule?

A. As a rule it does not.

Q. And, equipped with a profile, you would still have to make a personal examination of the grade in order to be qualified to compute the quantity?

A. Not necessarily a personal examination, but there would certainly have to be some additional information furnished.

The MASTER: Wouldn't it show the sides of the cut?

WITNESS: No, sir. I would be glad to have a profile brought up if that would help the matter any, an office profile.

Mr. DURMENT: Is there any standard or usually accepted width of the roadbed at grade or slope which is commonly understood unless the contrary is expressed?

WITNESS: No, sir; I don't think you can say that.

Q. When the quantities in the grade of the Great Northern in this state, as they appear from your former exhibits, were computed, by whom was the computation made? was it made by you personally or by somebody under your direction?

A. It was made by engineers under my direction.

Q. And you made no personal examination of the grade or personal measurement of it so as to have strictly personal knowledge as to its correctness, did you?

A. No, sir.

Q. Now, then, you stated Friday, when you testified last, that when a profile estimate is made of a grade, it is customary, if the grade has stood any length of time, to add to it ten per cent for sinking or shrinkage or to cover the whole amount of material that went into it in the first place.

A. I said it was necessary to add a certain percentage and that ten per cent was such an ordinary percentage.

Q. Now, then, when the computations, with reference to your road which are based upon a so-called profile estimate, were made, this ten per cent was added, was it not?

A. Yes, sir.

Q. Do you know whether the engineers in your employ went out and examined the various grades which they estimated for profile for the purpose of qualifying themselves to make this particular profile estimate, or did they do it depending upon their general knowledge of the road?

A. They did it in both ways. There were a great many personal investigations made and in many instances the matter was of record as to what the widths of the roadbed and the slopes were.

Q. And in those cases, of course, it was unnecessary to make the examination?

A. Yes, sir.

Q. But it is your understanding that in cases where the width and slopes were not of record, an examination was made by somebody to get at the accurate information?

A. Yes, sir.

Q. You know also, do you not, that in the profile estimates made by Mr. Morgan, he and his assistants went personally over the roads and made personal examination and personal measurements, and in at least some of the work they were accompanied by an engineer from your office?

A. Well, I understood they stopped every two miles and measured the width of roadbed. I don't think that would give a very close information on the subject.

Q. Well, have you closer information?

A. I think we have, yes, sir.

Q. Well, where you had information of record, that was taken, wasn't it, and simply verified by these measurements, and in cases where it didn't conflict with the actual measurements it was accepted, was it not, by Mr. Morgan?

A. I can't say as to that whether it was accepted or not.

Q. Don't you understand that to be what Mr. Morgan's tables purport to show, that they purport to show the quantities in the grades of your Company in cases where the quan-

tity was shown by your records, verified by personal examination and checking, and in cases where the quantity was not shown by your records, they show a profile estimate made after a personal examination and checking of the grade?

A. I haven't heard that gone into that way.

Q. You do know, do you not, that Mr. Morgan traveled over your entire System and made these personal examinations and measurements, both in cases where you had the information of record and where you did not?

A. I know that he made a trip over the road; yes, sir; and made certain stops.

Q. And stopped at least every two miles and made measurements?

A. I understand so; yes, sir.

Q. Well, there is a uniformity of width and of slope in your grades, isn't there, so that if a measurement was made every two miles on the System and an engineer was furnished with a profile in connection with that, he could make a pretty accurate estimate of the quantities of material?

A. Hardly by taking every two miles, no; sir; that wouldn't give him any information as to the settlement of swamps, etc.

Q. Well, in many instances he made measurements at shorter intervals than two miles, didn't he, wherever it seemed necessary; he traveled with a special train, and stopped wherever he considered it necessary?

A. Yes, sir; but my understanding is that he only measured the roadbed at every two miles.

Q. But you do know that he stopped wherever he considered it necessary to get information, don't you?

A. Well, I can't say whether he did or not. I don't know what his own thoughts were on the matter.

Q. There was an engineer from your office with him?

A. Yes, sir.

Q. There is no question about the accuracy of the measure-

ments where he made them?

A. Oh, no, I don't question that.

Mr. How: We have that engineer here. We would be glad to tender him as a witness if you want to cross-examine him or examine him on the subject.

Attorney General YOUNG: We will examine you later.

Mr. How: I say we have the engineer here who accompanied Mr. Morgan. We should be glad to tender him as a witness on the subject as to just what examination was made and where and when and how.

Attorney General YOUNG: Mr. How is extremely kind. We have men who were with Mr. Morgan at the time and Mr. Morgan has already explained how he did the work, himself.

Mr. How: I thought it might simplify this examination of Mr. Hogeland, who wasn't along and knows nothing about the matter except by hearsay. I might change that tender into a challenge.

Q. Now, Mr. Hogeland, in these arbitrary additions which you made to the yardage in your estimate of the reproduction, you added the arbitration to the so-called profile estimate, and you also added an arbitrary in cases where there was a record of the amount originally paid the contractor and a record of all the quantities that were put into the grade subsequent thereto, did you not?

A. I presume when you speak of the arbitrary quantities you mean the extra work not on record, in which case we did not add such quantities to profile estimate.

The MASTER: That is the ten per cent? You always added the ten per cent on a profile estimate?

WITNESS: Yes, sir; but I understood Mr. Young, when he referred to arbitrary quantities, to mean the quantities which I show as extra work not on record. I may have been mistaken in that.

Attorney General YOUNG: Yes, that is what I intended to

cover. Of course if it wasn't on record and you had no knowledge of it, it was an arbitrary, of course wasn't it?

WITNESS: I didn't know but I misunderstood, from what Judge Otis said.

Q. Did you make any other additions to quantities of material that entered into the grades of the Great Northern that were not the subject of actual measurement except the quantities which appear on your exhibits under the heading "extra work not of record"?

A. No, sir; except that in profile estimates I hardly consider you would call that the subject of measurements.

Q. I am not calling in question the ten per cent added customarily to a profile estimate, because the State's engineers did the same thing as you did in that respect, they added ten per cent to the estimate of the grade in every case where the quantity was attempted to be ascertained by a profile estimate; but after you had ascertained the quantity by the profile-estimate method, and after you had added the customary ten per cent to it to cover shrinkage or sinking of the surface, did you make any other arbitrary addition to the quantity?

A. No, sir.

Q. And include it in your tables?

A. No, sir.

The MASTER: Well, extra work not on record you added to it?

WITNESS: I understood Mr. Young's question to refer to profile estimates. Would you please read the question?

Q. Well, don't you add this item of extra work not of record to grades where the quantity was ascertained by a profile estimate?

A. No, sir.

The MASTER: Take No. 3 in Ex. 3. You have your profile estimate, 690,396, which includes ten per cent added, Minneapolis Junction to Cedar Lake?

WITNESS: Yes, sir.

The MASTER: That includes the ten per cent?

WITNESS: Yes, sir.

The MASTER: Now, to that you add extra work on record 660,450?

WITNESS: Yes, sir.

The MASTER: Then there is what has been referred to as an arbitrary, that is, depending upon your own judgment without any record, extra work not on record, 135,084?

WITNESS: Yes, sir.

The MASTER: That is added?

WITNESS: Yes, sir. Now, I would like to explain that: The 690,396 yards from profile estimate covers a portion of that line; that is made the same as all the other profile estimates, with the ten per cent added. The extra work on record, 660,450 cubic yards, covers another part of that line for which we had very complete record, and the 135,084 cubic yards of extra work not on record applies to that part of the line where we did have the extra work on record, and not to the part that is figured from profile.

The MASTER: Then, wherever in this exhibit there is a profile estimate and also extra work on record and extra work not on record, the profile estimate is for a separate and distinct part of the road than that covered by the other two columns?

WITNESS: Yes, sir; except that I would like to explain Section 4, Cedar Lake to Breckenridge: For that piece of road we had very complete records dating back to 1886, and we used those records from that date, taking the original profile as it existed before that and figuring the quantities from that profile, amounting to 3,142,550 cubic yards.

The MASTER: That was the work up to that time?

WITNESS: That was the railroad as it existed up to 1886.

The MASTER: And that you took from the profile?

WITNESS: Yes, sir; and the work which has been done since that time I have added in in the two columns 3 and 4, extra

work on record and extra work not on record.

Q. What percentage did you usually add as so-called extra work not on record?

A. There was no usual percentage. Sometimes it was put in as a percentage, and other times as a lump amount, depending on my knowledge of the line.

Q. In order to make that addition, you made no special personal examination of the road to qualify yourself to embody your individual opinion in that amount which you added?

A. No, sir; I depended upon my thirty years' knowledge of the lines in Minnesota for that purpose.

Q. Well, sitting in your office, controlled by your thirty years' knowledge of the road, you simply took your pencil and added a certain arbitrary amount to a certain section and a different arbitrary amount to another section and called it extra work not on record, did you?

A. I added a certain amount; sometimes I was guided by a percentage and sometimes I put in a lump sum, depending on the condition of the records as to how full and complete they were and my knowledge of what had been done on each particular line.

Q. Now, take the line to which the Master called your attention. Minneapolis Junction to Cedar Lake; you say that the arbitrary amount for work not on record was added only to cover the portion of the original work which was a matter of record; what per cent of that original work of record did you add as an arbitrary?

A. I can't tell you from my notes here.

Q. Twenty per cent, wasn't it?

A. I think it was about twenty per cent.

Q. Did you aim to make 20 per cent, substantially, your basis for the addition of the alleged work not of record?

A. No, sir.

Q. Now, Mr. Hogeland, in cases where you had a record of

the construction of a line so that it was unnecessary to resort to the profile method, that record was theoretically correct, was it not, and ordinarily was correct?

A. It was correct, as far as it went.

Q. Well, where you have a record, doesn't that record show everything that went into the line?

A. No, sir.

Q. Why not?

A. Because it is not necessarily complete.

Q. And are you able to sit down in any instance and to say to what extent it is complete and to what extent it is incomplete

A. Pretty closely; yes, sir; by the comparison of the record with the work which has been done on the line.

Q. Well, now, assuming that you were keeping a correct record. the record would show the total quantity, would it not, and that quantity would consist of the amount originally paid the contractor and the amount subsequently put into the grade by virtue of some authorization from some officer of the Company?

A. No, sir; not at all.

Q. Well, what does your record show, will you kindly state, with reference to the grading, what is it intended to show?

A. The information in regard to grading is found in many detached places. It is not gotten together for each particular line, as you would indicate from your question, but has to be found in various places, various reports.

Q. Well, after you have assembled it, what does it show? does it show the correct amount that went into the grade, or does it not?

A. It shows what your records show, which may be very incomplete. In fact, the Northern Pacific's are so incomplete that they could not use it that way; all of their estimates had to be made from profile.

Q. We are talking now about the Great Northern.

A. I simply used that as an illustration.

Q. Do you want to testify, Mr. Hogeland, that there is no instance where your record is complete as to the quantity of material in the grade?

A. No, sir; I haven't testified that way.

Q. Well what do you mean? Do you mean that it is complete or that it is not, in any instance?

A. I mean what I have said.

Q. Well, what did you say?

A. The questions will show, and the answers.

Q. It won't hurt the record to say it over again. I would like to understand you: Are your records complete as to the quantity of material in the grade of your road in any instance?

A. I think they are for the Kelly Lake-Fermoy line.

Q. Is that the only instance on your entire System in this state where your records are correct?

Mr. HOW: That is objected to. I think that is an improper question.

The MASTER: Oh, I think it is fair cross-examination.

Mr. HOW: I submit that the witness has not testified that his records are incorrect in any respect. Now, this question asks if that is the only instance in which his records are correct. I think it is an improper question.

The MASTER: Well, full and correct is what he has in mind, I suppose. He has been talking about a complete record.

Mr. HOW: Well, if he will say "full and complete" that is different; they may be incomplete records, but the records are correct.

The MASTER: I think he used "correct" there in the sense of not stating the full amount.

Attorney General YOUNG: Mr. How is too sensitive.

Mr. HOW: I don't want the witness to be misled, that is all. My feelings are not hurt.

The MASTER: By "correct" the counsel means "complete," I suppose. That is, by correct he means complete.

A. Well, if you will make it "complete" I will say yes, so far as I know.

Q. Why are they incomplete on other lines?

A. Because it is impossible to get every item of grading which goes into a line reported.

Q. You stated in your testimony, Friday, Mr. Hogeland, that at least during the last twelve or fifteen years no addition to the grade of a road could be made and no material improvement outside of its up-keep could be made without special authorization; isn't that true?

A. Very nearly true but a large amount of material which goes in for the ordinary up-keep is properly a part of the roadbed and would not be reported.

Q. Is that paid for out of capital account?

A. I can't tell you how it is paid for, but it is in the roadbed.

Q. By whom is it put in?

A. It is put in by the Company's forces.

Q. By the section crews?

A. It may be, or extra gangs.

Q. Those men, section crews and extra gangs, employed for the ordinary up-keep of the road, are paid out of the earnings, and the cost of that work is charged to operating expenses, is it not?

A. I can't tell you how that is charged.

Q. Well, now, you know how it is charged, don't you?

A. No, sir; I want to answer you truthfully, that I don't know how it is charged. It is not a part of my business.

Q. Wherever an expenditure is made out of capital, so that it costs the Company something, it has got to be made by authorization of the President, hasn't it?

A. That doesn't necessarily govern, as I understand it, to what account it is to be charged. If it is an improvement to

the existing property. an addition to the existing property, it has to be covered by an authority for expenditure. That does not mean, as I understand, that it is charged into either one account or the other.

Q. Well, you certainly know enough about railroading to know that ordinary maintenance isn't paid for out of capital, don't you?

A. If you are asking me as a matter of general information I will answer, but if you want to know how our books are kept I can't answer.

Q. Well, don't answer unless you want to. Do I understand you to mean, then, as a final proposition, that the additional amount which you have charged or which you have included in your estimate of quantity, is put in there in order to cover such additions to the quantity in the grade as may have been made by section crews or men employed in a kindred capacity?

A. Partly so, and partly to cover quantities of grading put in for other purposes and not reported.

Q. By whom would grading be put in and not reported, by what class of employes?

A. It might be by the same class of employes, extra gangs and by section men; it might be by other forces employed.

Q. Isn't it a fact that that is the only class of work upon a grade that is not reported by the superintendent or by the person properly in charge of the work as an addition to the quantities in the grade?

A. No, sir.

Q. What other officers stealthily put materials into the grade and don't report it, are there any? Can you answer?

A. If you cut out that word "stealthily."

Mr. HOW: That is objected to as wholly improper.

Attorney General YOUNG: Strike that out. I will ask another question.

Q. Are there any others, outside of the section crew and men

in kindred employment, who have a right to put material into the grade of the road without reporting the quantity put in, so that it may be accounted for by the Company and charged to the proper fund?

A. All such quantities are supposed to be reported, but we very often come upon cases where work has been done and not reported.

The MASTER: By whom?

WITNESS: By the section men and by the extra gangs under the superintendent, such as road crossings and bridges partly filled in.

Mr. DURMENT: When you do come upon that information, do you put it of record anywhere in your office?

WITNESS: We try to.

Mr. DURMENT: So that when you make up your report, all of the kind that has been discovered of that sort would be of record and shown in the quantities?

WITNESS: We try to treat it that way.

Q. Well, now, then, where you have a record of the quantities that enter into the construction of a grade as accurate as you try to keep them, what justification is there for adding an arbitrary amount as alleged work not on record?

A. Because of the work which has been done in the way that I have described and forms a part of the roadbed.

Q. Now, one of the principal differences in quantity between yourself and Mr. Morgan as to the grading on your road, arises from his refusal to adopt your arbitrary amounts that were added as alleged work not on record, does it not?

A. I think that is one of the items.

Q. What is your opinion, as chief engineer, as to the propriety of adding to the quantity amounts which are naturally put into the grade in the work of maintenance by the section crew?

A. I think they properly belong there; they form a part of

the roadbed as it exists today, and it covers work which would have to be done again in reproduction.

Q. Isn't it entirely probable that anything that has been done upon your road by the section crews would, in case of reproduction, be done in the new road by the section crews, also?

A. It possibly would. But before the roadbed would be in its present condition it is work which would have to be done no matter by whom done.

Q. In making an estimate of the cost of reproduction of a road, do you think it would be a fair proposition to embody in it all of the sums of money that have been paid out for maintenance as well as what the construction originally cost?

Mr. HOW: That is objected to as immaterial, improper, irrelevant. I don't want to advise the witness not to answer, I shall advise the witness not to answer if counsel goes into a discussion of principles of law. That is, I am through with submitting to that unless the Court orders me to.

Attorney General YOUNG: This witness, your Honor, is the author of a showing here on the ostensible cost of reproducing this road. I have a right to ask him whether, in his opinion, as the author of that evidence, he believes there ought to be included, as a part of the cost, money that has been expended merely for maintenance while the road has been operated.

The MASTER: Well, if he can answer he may.

A. No, sir.

Q. If not all of what had been paid out for maintenance should be included, why should any of the cost of maintenance be included?

A. Whatever work the section men may have done, or extra gangs may have done, in the way of widening cuts or widening fills, placing additional material in them, should be considered a part of the reproduction cost; it is certainly something which would have to be done again to put the roadbed in its present condition.

Q. Do you think that class of work could be done in the process of construction, or wouldn't it have to be done as it has been done on your road in the work of maintenance and as it became necessary in maintenance?

A. Part of it would probably have to extend over a period of years, and certainly would, before the roadbed would assume its present solidity.

Q. You have not undertaken to make any allowance for that part of it which ought properly to remain to be done by section crews? You have put it all in wherever you have found that any such quantities have been added by section crews or men doing similar work?

A. I have put them in because they are in the roadbed now and in a reproduction scheme they ought to be provided for.

Q. I guess that is as justifiable as a good many of the other elements of a reproduction scheme. By the way, will you state, if you can, in a single sum, the total yardage which you claim to now be in the road in this state. Get it together, it appears from your exhibits.

A. 61,363,800 cubic yards.

Q. And do you remember the total amount shown by the State's engineer?

A. I will have to look that up. I don't know that I have it. I can tell you the difference.

Q. Let me ask before that,—included in your estimate is the Minneapolis Union and the Minneapolis Western roads, and isn't there another little branch, Kelly Lake to Fermoy, that is not included in the State's estimate?

A. Yes, the State had separate estimates for the Minneapolis Union and the Minneapolis Western.

Q. That would be included in the gross estimate?

A. Yes.

Q. If you have the difference it will be just as well.

A. I have the difference.

Q. What is the difference between your estimate as to quantity and the quantity-estimate of the State's engineer?

A. 6,206,592 cubic yards.

Q. That is the State's estimate of quantities is that much less?

A. Yes.

Q. And does that include the Minneapolis Western?

A. That includes the Minneapolis Union and the Minneapolis Western.

Q. It doesn't include Kelly Lake to Fermoy, because that was not made by the State at all?

A. Well, the difference is included in there; yes, sir.

Q. The quantity in the grade from Kelly Lake to Fermoy is included in that difference?

A. Yes.

Q. And if the yardage included in the Kelly Lake to Fermoy were deducted from that difference, it would show the actual difference between you?

A. I can give you that. Deducting the yardage on the Kelly Lake-Fermoy line, included by the Railway but not included by the State, makes the difference between the Railway quantities and the State's quantities 5,473,937 yards.

Q. Now, after the quantity of yardage in your line had been ascertained by your method, you used as a basis for computing the cost of reproduction, your own opinion as to the cost of grading? By that I mean you were not guided by what was paid by the Company, but you put down as your opinion the actual cost to reproduce the road, what it would actually cost to grade the road?

A. Yes, sir; I based it on my opinion, and that was based on my experience.

Q. And the average cost, as shown by your estimate,—if we can get these things together it will probably be convenient.

A. Do you want it for all classes of material?

Q. All classes of material for the state.

A. Was 33.8 cents per cubic yard.

Q. And now if we could put, right beside that, the average cost for all classes of material in the estimate of the State engineer.

A. He made it 28.7.

Q. The average cost for all material in the estimate made by the State engineer is 28.7; leaving 5.1 cents as the difference in the cost per yard in the two estimates?

A. Yes, sir.

Q. Now, then, your Ex. 4, used on your former examination, and your second amended Ex. 4, as used in your examination Friday, purports to give your experience as to the cost of grading during the last nine years, was it?

A. During the last eleven years.

Q. And was intended solely to show by your experience that there was a justification for the price which you had used, was it not? It was intended for no other affirmative purpose?

A. No, sir; it was intended to confirm the prices we had used.

Q. In other words, the average cost per yard which you had used in your estimate was considerably above the average cost per yard paid to contractors for the work, and you aimed, by Ex. 4, to show that there was a constant additional expense, over and above the amount paid to contractors, which would have to be taken into account in giving the actual average cost?

A. Yes, sir.

Q. Now, the information contained in Ex. 4 was taken from the books of the Company, was it not?

A. Yes, sir.

Q. And after the introduction of Ex. 4 by you in your original testimony, you offered another exhibit in lieu of that, which was designated, I believe, for identification, as "Ex. 4 Corrected"?

A. Yes, sir.

Q. That was also taken from the books of the Company, wasn't it?

A. Yes, sir.

Q. And you now offer as an amended Ex. 4, covering the same subject on the same lines, which is also taken from the books of the Company?

A. Yes, sir.

Q. If these are all taken from the books of the Company, how does it happen that they so materially differ in essential details?

A. That is due to the different way the analysis has been made?

Q. By your original Ex. 4 the final conclusion from everything that was disclosed by it was that there was a constant additional expense over and above the amount paid contractors in grading of about 11 cents a yard? I think it is substantially 11 cents.

A. Yes, sir; I think it was 11.3 cents, to begin with,—the first Ex. 4, 11.4 cents.

Q. And in your Ex. 4 Corrected, which covered the same ground, what was the constant or average to be added to the amount paid contractor, in order to get at the cost of grading?

A. I think it differed one-tenth of a cent—11.3 cents.

Q. And, in your second amended Ex. 4, what is the constant shown to be?

A. 10.5 cents.

Q. A variation of about .8 of a cent. Now, on Ex. 4 there appears, if I have examined it correctly, seven different pieces of construction in Minnesota during that period.

A. Yes, sir; seven pieces.

The MASTER: What period did you say?

Attorney General YOUNG: The period of the last eleven years.

Q. And all other instances of construction that are men-

tioned upon Ex. 4 were construction outside the state?

A. That is true.

Q. And many of them were in the mountains, in the western part of your System, were they not?

A. None of them in the mountains.

Q. Well, in the mountainous region, in the vicinity of the mountains?

A. They covered all parts of the line west of Minnesota, and one piece in Nebraska.

Q. Rock construction is concededly the most expensive construction, is it not, in building a grade—that is, loose and solid rock?

A. Yes, sir.

Q. Solid rock being more expensive than loose, but either being considerably more expensive than earthwork. Could you tell what percentage of rockwork there was in the construction in the state during eleven years?

A. A little less than three per cent for both solid and loose rock in the state of Minnesota.

Q. What percentage of rockwork, if you can tell us, is included in the work shown on that exhibit outside the state?

A. I make it about 20 per cent.

Q. 20-plus, isn't it?

A. It would probably be a little over 20 per cent.

Q. So that, so far as that exhibit is concerned, the work done outside the state was very much more expensive work than that done within the state, wasn't it?

A. Yes, sir.

Q. And is it not true that, so far as your line in the state of Minnesota is concerned, the percentage of rockwork, both solid and loose, is higher in the Minnesota lines shown on Ex. 4 than on the entire System in the state?

A. It is somewhat higher; yes, sir.

Q. The percentage of rockwork in the state, is just a shade

over one per cent isn't it, the total yardage?

A. No, sir; it is one and one-quarter per cent.

Q. So that it would be fair to say that the construction of the lines in Minnesota that are referred to and given on Ex. 4 is somewhat more expensive than the average construction in the state?

A. I think they represent a pretty fair average.

Q. But the cost of construction of the work outside the state would be, so far as rockwork is concerned, entirely out of proportion to any work in the state?

A. Yes, the total cost per yard of the work outside of the state would be higher than the average for the state.

Q. Now, while we are on that subject of the rockwork in the Great Northern grade in the state, you have stated that the percentage of rockwork as shown in your estimate is about one and a quarter; can you give, without trouble, the percentage of rockwork shown in the estimate by the State's engineer?

A. I don't think I have that. I didn't figure what his percentage of rockwork was. I understand it is about nine-tenths of one per cent.

Q. Now, as compared with work within the state, in the yardage of which there is not to exceed one and one-fourth per cent, it is hardly a fair comparison to compare it with work in which the percentage of rockwork exceeds 20 per cent outside the state, is it?

A. It would not be, if you used those prices, but so far as arriving at the constant is concerned, I consider it fair.

Q. Now, when you had presented your other Exhibits 4, that is, your original Ex. 4 and your Ex. 4 Corrected, Mr. Morgan criticised them in his testimony and stated that the conclusions drawn from those exhibits was not justified by the figures given, and his criticism was one of the reasons, at least, why you made your second amended Ex. 4?

A. Yes, sir; that was one of the reasons.

Q. Now, then, in the cost of grading, in addition to the amount that the Company is obliged to pay the contractor, there is a certain amount of inevitable additional expense, some of which is paid the contractor for extra work done by him, and other items some of which are paid for other purposes; that is true, is it not?

A. Yes, sir.

Q. Will you enumerate, briefly, the principal items which go to make up that extra expense in addition to sums paid contractor and which are properly chargeable to the yardage moved by the contractor?

A. The overhaul is an item which is paid the contractor, but not on his price per yard. That is one of the items that goes to make up the so-called constant.

Q. That is, the extra expense in grading?

A. Yes, sir. Transportation of grading outfits; supplies for such outfits; transportation of laborers; powder and extra bills which are not paid by a price per yard and are applicable to grading such as ditching, which cannot be or is not measured; road changes; moving fences, rubbish, telegraph or telephone lines, and work of that nature,—all properly chargeable to grading but not paid to the contractor on a yardage basis.

Q. And there is always more or less of that work to be done and paid for in that way?

A. Yes, sir.

Q. Now, Mr. Morgan's criticism of your Ex. 4 Corrected was not that you had included those items, at least the items that you have referred to, outside of transportation at tariff rates, but it was a criticism which attempted to show that you had added to the average cost of grading, money paid by the Company for the moving of additional yardage outside of that moved by the contractor, and that after you had added that additional cost to the cost of grading, in order to get at the average cost per yard you divided it not by the yardage moved

by the contractor plus the additional yardage used afterwards, but by the yardage moved by the contractor alone; and that was true, was it not?

A. Yes, sir; that was his criticism, and there was a certain merit in it.

Q. To avoid that criticism, in your second amended Ex. 4 you made certain changes by deducting as you state, I think, all sums paid for the moving of additional yardage in the lines referred to, and leaving in what I believe you stated to be only the legitimate additional cost chargeable to the yardage moved by the contractor; is that correct?

A. That is right.

Q. And pursuing that course in your second amended Ex. 4, as compared with your first amended Ex. 4 or your Ex. 4 Corrected, as I think it is called on the record, you deducted from the work shown on the line from Cloquet to Boylston and Deer River to Fosston, appearing as the first item on Ex. 4 the sum of $266,080.77, being the amount which had been incurred for the moving of additional yardage than that moved by the contractor on that line?

A. Yes, sir.

Q. And that reduced, upon that line, the average cost of the grading from 35.3 cents per yard as it appeared on Ex. 4 Corrected, to 28.7 cents per yard as it appears on second amended Ex. 4?

A. That is true.

Q. From Hibbing to Virginia you deducted $10,813.44, for the same reason?

A. Yes, sir; $10,813.44.

Q. Brookston to Ellis you deducted, for the same reason—

A. $60,911.91.

Q. And from Kelly Lake to Nashwauk you deducted, for the same reason,—

A. $594.32.

Q. From Thief River Falls to Greenbush you deducted, for the same reason—

A. $9,283.30.

Q. From Kelly Lake to Fermoy you deducted, for the same reason—

A. $5,425.77.

Q. On the line from Greenbush to Warroad you added—

Mr. HOW: That amount from Kelly Lake to Fermoy was not deducted for that reason, I think—was it? that was a mistake in charge; it was simply a clerical error but not deducted—

WITNESS: Well, it was deducted.

Q. It was in the original Ex. 4 Corrected?

A. The deduction may not all have been on that account, but it was deducted. On the line from Greenbush to Warroad we added $9,400.91.

Q. Could you give, in a gross sum, the net amount deducted from the total cost of grading on those Minnesota lines in your second amended Ex. 4?

A. I make it $343,708.60.

Q. And the total yardage of all material in Minnesota on those lines was 7,305.931, was it not?

A. No, sir; it is 7,326,891.

Q. Are you reading from Ex. 4 Corrected now?

A. I am reading from Ex. 4 second amended.

Q. What did it appear to be on Ex. 4 Corrected?

A. 7,305,931, but as corrected to agree with the corrected charges it is 7,326,891.

Q. We will get to that a little later. I want the yardage as it appears on Ex. 4 Corrected. The amount, therefore, deducted from the cost of grading on the Minnesota lines, as applied to the quantities appearing in Ex. 4 Corrected, amounted to nearly 5 cents a yard, did it not?

A. I think about 4½ cents.

Q. 4½ cents a yard?

A. I think about that.

Q. Did the correction of the erroneous charges made to quantities of grading shown on Ex. 4 Corrected, as made by your second amended Ex. 4, change your conclusion as to the average cost of grading on those Minnesota lines?

A. Of what it would cost to reproduce them?

Q. Yes.

A. No, sir.

Q. You had charged to those Minnesota lines however, a sum which was at least 4½ cents a yard in excess of what ought properly to have been charged to them?

A. What do you refer to in saying we had charge?

Q. Well, you had charged to the yardage appearing on Ex. 4 Corrected these various sums for extra work not properly chargeable to that yardage, which amounted in the aggregate to $343,708.60, as applied to the yardage shown in that exhibit that would amount to, you say, about 4½ cents a yard; ought not the deductions of that improper charge against the yardage in Minnesota operate to reduce the cost of that grading in Minnesota by at least 4½ cents a yard?

A. No, sir; I don't consider it so.

Q. The cost in Minnesota would be just the same whether you deduct the erroneous charge or not; is that your position?

A. No, sir; those two don't follow.

Q. Well, how can you avoid reducing the cost of that grading in Minnesota by deducting the amount which had been improperly charged to it?

A. It was not improperly charged to grading; as I explained before, it was a proper charge against grading.

Q. Other grading?

A. It was a proper charge against grading, but the analysis which we made of the charges in Ex. 4 was not correct. I can explain that by repeating that the prices, the unit prices for grading in Minnesota, were put on by me from my knowledge

of each line what it would cost to do it. Ex. 4 had no bearing on those prices. It was made up to show that there is a large increased cost per yard over and above what is paid contractors which it is necessary to add to the contract price to arrive at the full cost of grading; so that the changes in Ex. 4 did not affect my judgment as to the prices which I had previously put on Ex. 2.

Q. Suppose that the only instances of work done shown by Ex. 4 had been the Minnesota work, would it then have changed your conclusion?

A. No, sir.

Q. Well, wasn't Ex. 4 intended by you to show not only that there were certain legitimate extra charges to grading but the average amount per yard which should be added to the amount paid contractor in order to show the real cost, and didn't you, by virtue of the illustrations used on Ex. 4, (that is, I am referring now to Ex. 4 Corrected) claim that, in your opinion, there should be added to the contract price of grading in every case at least 11 cents a yard to cover this extra work?

A. Yes, sir; I said that previous exhibit showed that.

Q. Now, then, you said that, because you claimed this exhibit showed it. So far as the Minnesota lines are concerned, if this amount which you had charged to grading in the case of the Minnesota lines and which really had been incurred for the moving of additional yardage, but which you had applied to moving the contractor's yardage, was taken away, then Ex. 4 doesn't show what you claimed for it as to the amount of the constant, does it?

A. Why, I think it does as it is corrected. It shows what the constant appears from those figures.

Q. In your Ex. 4 amended, notwithstanding this large deduction from the total cost of the yardage moved by contractor on the Minnesota lines, you have changed the quantities shown in your exhibit so that the result is just the same as it was be-

fore the deduction was made, isn't it?

A. No, the result is not the same.

Q. Well, it is practically the same?

A. It is the same within eight-tenths of a cent a yard, but the same method was pursued with all of the lines, cutting out the charges which didn't apply to grading, or *vice versa*, getting in all of the grading which did apply to the charges.

Q. Well, if your books on that question are correct, why didn't you have these sums agree, in the first place? you stated, I believe, we should have access to your books and that all of these exhibits are taken from your books; now, which information would the books show us if we examined them?

A. They would show both the information which I had on the first exhibit and what I have on the present one, but we have the information in such shape that we can show you just what changes have been made and why it was considered proper to make them, the idea being to get the total yards corresponding to the total charges.

Q. But you have changed the yardage on lines away outside of the state of Minnesota, as to which we are not concerned and as to which we have not the facilities for examination or comparison, and by reason of those changes as to quantities in the lines outside the state you still insist that your amended Ex. 4 shows the same result, within eight-tenths of a cent, as to the cost of grading in Minnesota as the other one did, in the face of the fact that after making these deductions you admit that it takes away from the average cost of grading in Minnesota at least 4½ cents a yard?

A. Yes, sir; that is strictly correct.

Q. Now, Mr. Hogeland, will you kindly give me the average cost of the construction of the lines in Minnesota as they appear on your amended Ex. 4, with your constant added, leaving out the other lines.

A. Just the Minnesota lines?

Q. Just the Minnesota lines.

A. 31.2 cents.

Mr. DURMENT: That is the average?

WITNESS: You meant the dollars and cents?

Q. I meant the average cost per yard of doing the grading on those lines in Minnesota. How did you get at it so quickly?

A. Well, I had it here; I thought you would probably want it.

Q. Now, then, you stated, a little while ago, I think, that on account of the amount of rockwork in the construction on those lines, at least it was fully up to the average cost in Minnesota; it must be that, must it not?

A. So far as the classes of material are concerned; yes, sir; I think that is true.

Q. Now, the State, in its estimate of the cost of reproduction, concedes 28.6 cents per yard, doesn't it? so there is not a very wide difference between you, if you confine yourself in your Ex. 4 to the Minnesota lines?

A. The State concedes 28.7 cents.

Q. Throughout the state?

A. Per cubic yard for all material.

Q. And on these lines, if confined to Minnesota, with the constant added that is contended for in this exhibit, the average cost would be 31.2 cents?

A. Yes, sir; the average cost per yard of the seven lines shown in Minnesota of all materials, is 31.2 cents.

Q. My associate calls my attention to the fact that on this Ex. 4 there is included the Kelly Lake to Fermoy line, which is one of expensive construction, that was not estimated at all by the State, for the reason that it was not built.

Mr. DURMENT: The same thing is true as to the Greenbush-Warroad line.

Q. Well, that is an average cost of construction, I thought it wouldn't change it any.

A. That is very low.

Q. Well, take them both out, the low and the high one, and it would make the average cost of the roads shown on Ex. 4, with the constant added, so little different from the average given by the State by the State engineer that I think it is less than half a cent.

Mr. DURMENT: The State gives a half cent more.

Q. Half a cent more than the average shown on those lines in Minnesota. Now, the yardage shown on all the lines shown in Ex. 4 includes that item of extra work not on record as part of the gross. The only yardage shown is the yardage paid contractor. I just want to ask—in the construction of those lines on the western part of your System, in addition to the more difficult construction involved on some of those lines and the disproportionate amount of movement of rockwork there is also included the element of transportation for long distances, is there not, that would differentiate those lines from the lines in Minnesota?

A. That would apply to some of them.

Adjourned until Tuesday, September 21st, at 10 A. M.

Federal Building, St. Paul, Minn., Tuesday, September 21, 1909. The hearing was resumed at 10 o'clock A. M.

ALBERT H. HOGELAND,

recalled for further cross-examination, testified:

By Attorney General YOUNG:

Q. In your testimony on Friday last, Mr. Hogeland, you gave some instances where you said that Mr. Morgan's quantities of loose and solid rock were less than your records showed; did you personally examine the records of the Company, in the instances referred to, to ascertain what those records showed as to quantities?

A. Not personally.

Q. You know do you, not, that Mr. Morgan did examine the records of the Company and take off the quantities as shown by the records for his use in making his estimate?

A. Yes, sir; as far as records could be found at the time he made his examination. Additional records were found from time to time and were embodied in our returns to him on the blanks which he had furnished.

Q. Well, did you make any returns to him after 1907?

A. No, sir; except in piece-meal as he asked for it.

Q. Except for something he asked for specially?

A. Yes, sir.

Q. So far as this question of grading quantities is concerned, you don't know of any report having been made to him subsequent to—was it 1907 or 1906 when you furnished him a report?

A. The report was furnished him in 1907, but it was brought up to June 30, 1906.

Q. Well, so far as these quantities are concerned, you are not aware of any other report than the general one having been made, are you, to Mr. Morgan?

A. No, sir.

Q. But you do know that, in addition to that report, he went down to the office and did examine the records, or undertook to do so, as to these quantities?

A. Yes, sir.

Q. And you and Mr. Morgan discussed the matter, several times, didn't you, while he was doing his work, with a view to reaching an agreement on matters where the difference between you wasn't wide apart?

A. Yes, sir; that is true.

Q. And do you not know from those interviews, that Mr. Morgan claimed, at least, to have taken the quantities shown on the records of the Company and questioned only the alleged work which you had designated as not of record?

A. I think that was his intention.

Q. Since your testimony I have examined his original notes, he not being here, and that prompts me to ask you whether you think the records down at the office have been added to (additions made to them,) by reason of new information acquired since that report was made.

A. They have had additional information brought together which we have found in the records. Whether it would be since that report I couldn't say, but I know we have found additional information repeatedly the further we have gone into the subject.

Q. And, wherever you found anything new, you incorporated it in your records and made it of record as you—

A. Yes, sir; brought them together so that they can be examined and readily found.

Q. So that the information from the record, as it is now given in your testimony, may not correspond with the information which the record disclosed at the time of the report to Mr. Morgan,—there are some additions to it?

A. There may be some additions; yes, sir.

Q. Otherwise I don't understand how these discrepancies can be accounted for, because Mr. Morgan's original notes correspond with his testimony. Where discrepancies appear, then, between quantities on record outside of the amounts paid original contractor, between your showing upon that question and Mr. Morgan's showing upon that question, it may, and probably did, arise from the addition to your records of new information ascertained since your report was made to him?

A. It may arise that way partly.

Q. I notice in your testimony, in explaining how the percentage of the higher-cost material in your grades had been increased above the percentages appearing in the final estimates, you stated that the percentage of increase was because, in your opinion, more of those kinds of material had been

moved in later work than in the original construction; would that be true of all of the classified materials?

A. Yes, sir; but not to the same extent.

Q. You stated also that the extra work of record done since original construction consisted very largely of widening and deepening excavations, and that that was a reason why you thought a larger amount of hard-pan, at least, would appear in the extra work than in the original construction. Now, I would like to have you explain, so we will have it on record, just how hard-pan is encountered, at what depth it is usually found, and what thickness or stratum of hard-pan is usually encountered in excavations in this state.

A. There is no regularity about it at all. It could not be described in any general terms.

Q. It varies in different localities?

A. Yes, sir.

Q. And it varies also as to the depth at which it is found?

A. Yes, sir.

Q. The work in widening cuts is usually steam-shovel work?

A. Yes, sir.

Q. And in doing steam-shovel work is there any note taken of this hard-pan? doesn't the steam shovel work that up just the same as the rest of the material?

A. Oh, no, sir; the harder the material the more expensive to handle.

Q. I know, but the steam shovel goes right through hard-pan, doesn't it?

A. No, very often not without blasting.

Q. The position of hard-pan is that of a single stratum, is it not, of earth of varying thickness, there being hard earth above it and hard earth below it?

A. Not at all.

Q. Well, what is the position, then?

A. It is so very irregular that it is hard to describe it in

any general terms, but as a general proposition, the earth would be found on top, the hard-pan next and if there was rock in the cut, that would lay under the hard-pan.

Q. It would be solid rock?

A. Possibly; changing from loose to solid rock.

Q. Well, there must be an ordinary thickness of hard-pan encountered in grading, isn't there?

A. No, sir; not at all.

Q. But after you get through the hard-pan, there is again the ordinary material similar in character to that found above it?

A. No, that is not my experience.

Q. Well, what is the character of the material below the hard-pan?

A. I think I could describe that pretty well, Mr. Young, in a general way, by saying that the earth was on top, the hard-pan below, gradually merging into still harder material, which would eventually become rock.

Q. At what depth is hard-pan encountered, ordinarily?

A. There is nothing ordinary about it. It can readily be seen by the excavations in the neighborhood of the city. There is no regularity about it.

Q. And no regularity as to its thickness?

A. No, sir.

Q. Well, this stratum of hard-pan is a stratum that is usually found in excavations such as well-digging and other deep excavations, and usually in well-digging they have to go through what they call the hard-pan in order to reach water, don't they, or are you familiar with that subject?

A. Yes, sir; to a certain extent. It is to be said that the hard-pan does not necessarily preserve a uniform hardness; it may be interspersed with layers of gravel, you very seldom expect to find soft, earthy material, under the hard-pan.

Q. But it is customary to go very much beyond the hard-

pan in excavating for wells, it isn't all called hard-pan after you strike the stratum of hard-pan, is it, after you go through it and reach another material?

A. I don't think you could make any general conclusions that way.

Q. And there is no general character of the material underneath?

A. No.

Q. In one instance it might be rocky and another not?

A. That is perfectly true.

Q. You stated in relation to, for example, the Willmar to Jasper line, that, in the original construction, there appeared to be about 4 per cent hard-pan; that in your estimate there is now, or would be, in case of reproduction, about 12½ per cent of hard-pan?

A. Yes, sir.

Q. Counsel for Complainant stated in a question to you that Mr. Morgan had testified that a large percentage of the extra work done after the original construction was in moving material from gravel-pits, and asked you whether that was true, to which you answered in the negative. Did you note just what Mr. Morgan had said on that subject?

A. My recollection was that it was about as stated by Mr. Holden.

Q. Mr. Morgan stated that a large part of the work done after original construction consisted in moving material from gravel-pits and nearby excavations; that is true, isn't it?

A. The nearby excavations is true, but not the gravel pits.

Q. You don't move anything from gravel pits?

A. Yes, sir; we do move something, but not any considerable portion for bank-widening and work of that kind done after.

Q. Gravel is used mainly for ballast?

A. Yes, sir; good gravel in Minnesota is too scarce an article to use it to any large extent for ordinary grading.

Q. Well, you didn't understand Mr. Morgan to mean, when he said that a large percentage was taken from gravel-pits and nearby excavations, that he necessarily meant that a very large percentage was taken from gravel pits alone, so as to feel compelled to say that it wasn't true, did you?

A. I think my comments on that were correct, that it is not true that a large part is taken from gravel-pits.

Q. But it is true that a large part is taken from gravel-pits and nearby excavations?

A. No, sir; leave the gravel-pits out and it is about right.

Q. Well, there are instances where you use material from gravel-pits?

A. Yes, sir.

Q. And don't you especially use the material obtained by stripping gravel-pits, material that would otherwise be wasted?

A. To a limited extent that is done; it depends on the amount of stripping, the depth of stripping; if it is very shallow it generally is more economical to waste it.

Q. But there is no rule as to its shallowness or depth?

A. No, sir.

Q. Now, you say, in answer to a query by Mr. Holden, in reference to this Willmar-Jasper line, that more than half of the material of which that grade is constructed was taken from side-borrow pits, and then say that the hardpan on the original construction of this Willmar to Jasper line was much more than 4 per cent of material taken from the cuts, as a matter of fact it is about 10 per cent. You didn't mean by that, did you, that the return for the quantity of hard-pan in that construction had been erroneously made?

A. No, sir.

Q. You simply meant that such a large part of the material going to build up the grade of the Willmar & Sioux Falls was taken from surface work, from side pits and that there was very little taken from line excavations in which hard-pan would be encountered?

A. No, sir; I didn't say that.

Q. Well, what did you mean, then? I would like to understand it.

A. If you will read my answer, I think it will—

A. Your answer is susceptible, to my mind, that—

Mr. How: What page is that found on, General?

Attorney General YOUNG: 1623 (transcript), at the bottom.

Q. After referring to the fact that a large part was taken from surface borrow pits—

A. I said the original grading quantities were more than half from side-borrow, where no hard-pan is allowed. That would necessarily mean, for the part that came from excavations where all of the hard-pan that was estimated would come from, more than 4 per cent of such excavation was hard-pan. As a matter of fact, about ten per cent of it was hard-pan.

Q. That is, there was less than half of the material in the grade obtained from those excavations, and about 10 per cent of what was so obtained was hard-pan, that was the idea, was it? That would be 10 per cent of less than half.

A. I put it that way in a general statement. I said that more than half. As a matter of fact, I think it was probably about half.

Q. So that the original return of 4 per cent in that road of the total material as hard-pan would not be contradicted by this testimony of yours; this would be consistent with the idea that there was in fact only 4 per cent of the total amount hard-pan?

A. Yes, sir; as estimated on first construction.

Q. That is what I wanted to get at. That is, there was about half, or more than half, in which there was no hard-pan, and about 10 per cent of the remaining portion, you think, was hard-pan?

A. Yes, sir; the portion which came from the cuts.

Q. Now, then, how does the quantity of yardage in the extra work compare with the quantity of the original yardage? Have you got that convenient? If you haven't it convenient, we will pass it over, because it is not very important.

A. I think I have it here on Ex. 3. About one-third of the total yardage in the Willmar to Jasper line has been done since original construction.

Q. Now, then, in order to make the percentage of the total yardage in the road now 12½ per cent hard-pan, there would have had to be a very high per cent of hard-pan in the extra work, wouldn't there,—more than 30 per cent?

A. I think about 30 per cent of the extra work; yes, sir.

Q. Do you think 30 per cent of it was hard-pan?

A. Yes, sir; I think it was, considering that in getting that material it was deepening and widening of cuts from which it was taken.

Q. Have you any record to show just the percentage of hard-pan in that work?

A. No, sir.

Q. You have used your own judgment solely?

A. Yes, sir; I have used my judgment in that.

Q. There was no work done on your System anywhere, where, in the original construction, there was any such percentage of hard-pan as 30 per cent, was there?

A. I think so; yes, sir.

Q. Original construction?

A. Yes, sir.

Q. Where was it?

The MASTER: Do your records show this classification?

Attorney General YOUNG: Not on the extra work. I just asked him that.

The MASTER: It does on original construction?

Attorney General YOUNG: On the original construction it does.

Q. Isn't that correct, Mr. Hogeland?

A. Yes, sir; that is right. On original construction, wherever hard-pan was returned, our records show it, but not on work done since original construction, because that has practically all been done by the Railway Company itself, and the total cubic yards would be returned, in a case of that kind, without classification. The Columbia Falls to Rexford line, built in 1904, and shown on Ex. 4, is an instance—

Q. I am speaking about Minnesota. You have no such instance in Minnesota?

A. No, sir.

Q. I don't care about your mountain work.

The MASTER: Well, isn't there anything to indicate the class of the work as the quantities are reported? is the cost reported at the same time?

A. Sometimes, but not always. If reported by the engineers, it is generally simply the yardage that has been moved but not the classification.

The MASTER: Well, is the cost reported in that connection?

WITNESS: Not as a rule; no, sir. No, sir. On the line from Red Lake to Thief River Falls, Section 28, the hard-pan on original construction was about 40 per cent of the original quantity.

Col. CLOUGH: I suggest to him to say that that is in correction of a previous answer that there was no such proportion as 40 per cent, I think he said, in the state of Minnesota. Now he finds an instance where there was. That is merely to permit the evidence to be read with more accuracy. That is right, isn't it, Mr. Hogeland?

WITNESS: Yes, sir.

Col. CLOUGH: You state that as a correction.

Q. The geological formation of the earth on the Thief River line and on the Willmar-Jasper line is entirely different, isn't it?

A. It is somewhat different.

Q. In your Ex. 2, filed as a part of your original testimony, you put in the cost of ballasting in this state as 62 cents per yard, I believe?

A. Yes, sir.

Q. The 62 cents per yard given as the cost of ballasting was not taken from the records of the Company, but was put in upon the basis of your own judgment of what it would cost, was it not?

A. Yes, sir.

Q. In forming your opinion as to the reasonableness of that item of cost, you were not guided at all by the records of the Company in constructing the original lines?

A. Not from any careful examination I had made of the records, but necessarily I knew about what ballasting had been costing us from what had been done.

Q. The ballasting that was intended to be covered by your price of 62 cents per yard, was the ballasting in this state and not the ballasting of the System, was it not?

A. The ballasting in this state.

Q. And for the purpose of demonstrating the reasonableness of that price, you prepared Ex. 6, didn't you, which purported to show the experience of the Company for the last nine years in ballasting?

A. Yes, sir; that is true.

Q. And the average cost of it. In other words, Ex. 6 was prepared with reference to ballasting for substantially the same purpose as Ex. 4 was as to grading?

A. That is true.

Q. And in your original Ex. 6, how many examples of work done in Minnesota did you have?

A. Two examples, I believe.

Q. And what were they, please?

A. Brookston to Ellis and Kelly Lake to Nashwauk.

Q. The average cost of ballasting, as shown by your original Ex. 6, was what, Mr. Hogeland?

A. Was 66.3 cents per cubic yard.

Q. And that average cost was obtained by taking the two Minnesota instances that you have referred to and several other instances of ballasting on other parts of the System outside the state, some of the work being done in the western part of the country on your lines?

A. Yes, sir; it covers fourteen pieces of construction on various parts of the System, including the two in Minnesota.

Q. When Mr. Morgan testified in this case subsequent to the date of your giving your original testimony, he criticised your Ex. 6 in respect to the cost of ballasting in this state, did he not?

A. Yes, sir.

Q. And claimed, if I remember his testimony right, that on the Brookston to Ellis line, where your Ex. 6 showed a total charge of $111,673 that you had used the wrong yardage in dividing that total cost; that is, that you had used a less yardage than that actually moved in ballasting that line, the result of which was to give you an abnormally large total cost per yard for the ballasting, did he not?

A. Yes, sir; as well as he criticised some of the charges to ballasting as well as the yardage.

Q. He also claimed that the sum of $7,875 charged to surfacing and shown on your subsequent Ex. 7 should have been charged to ballasting on this line, and that if so added to the ballasting it would increase the cost of the ballasting to practically the amount you showed on your amended Ex. 6?

A. Yes, sir; that is true.

Q. By the computation you had made, based upon your original Ex. 6, the average cost per yard for ballasting on the Brookston to Ellis line was shown to be 78 cents per yard?

A. It was.

Q. And that average cost per yard of ballasting was used in connection with the average cost for ballasting shown on the other lines referred to in Ex. 6, so as to get at the final average of 66-plus cents per yard as shown by Ex. 6?

A. Yes, sir.

Q. On your amended Ex. 6, offered in your testimony on Friday, you change the figures both as to the quantity of the yardage and the total cost of the work so as to give a yardage of 262,407 yards, and the total cost of $119,469.02; and by dividing the total cost by the yardage you get an average price per yard on amended Ex. 6 of 45.6 cents per yard, instead of the 78 cents per yard shown on your original Ex. 6?

A. That is true.

Q. Now, if you confined the examples upon Ex. 6 to the state of Minnesota, this error committed on original Ex. 6 and corrected on your corrected Ex. 6 would very materially reduce the average cost per yard for ballasting, wouldn't it?

A. Yes, sir; but that would not be fair. You cannot—

Q. I didn't ask you whether it is fair or not. I ask you what the result would be. It would reduce it, wouldn't it?

A. Yes, sir.

Q. In other words, the original exhibit was in error so far as the average cost per yard of ballasting on that line was concerned, was it not?

A. Yes, sir.

Q. And the average cost per yard on that line was used as an example, as a justification for the price per yard which you had stated in your estimate of the cost of reproduction?

A. It was used as an illustration to show what the ballasting had cost us, covering about two million yards.

Q. Now, you have made the correction by cutting down the cost per yard there about 32.4 cents per yard, haven't you?

A. The difference between 78 cents and 45.6 cents.

Q. Did that lead you to change the average cost per yard

of ballasting in your Ex. 2 which embodies your estimate of the cost of reproducing the road in this state?

A. No, sir; not at all.

Q. Did it change the average cost of ballasting shown on your Ex. 6 materially?

A. Not materially.

Q. In other words, the other figures as to quantities and cost were so changed in your amended Ex. 6 as to compensate for and offset the change made in the cost of ballasting on this line from Brookston to Ellis which you had used as an example?

A. They were changed in the same way that the Brookston to Ellis line was changed, corrected in the same way, both for yardage and charges, producing practically the same result in the end.

Q. The figures are all different, are they?

A. No, sir.

Q. Both were taken from the books? The materials for both these exhibits were taken from the books?

A. Yes, sir.

Q. And although the figures are different, and the unit costs are different, the result is just the same, is it?

A. The result is not just the same, but for practical purposes it is the same.

Q. Well, now, Mr. Hogeland, if you confine yourself to Minnesota examples shown on Ex. 6, and eliminate the work done on those western branches in the mountainous region, what average cost per yard for ballasting would you reach? Could you get at it without too much delay?

A. It would be a little less than 50 cents a yard.

Q. It would be exactly 46 cents a yard, wouldn't it?

A. I haven't figured it.

Q. Well, I have. It would make, if I have computed it right, 46 cents a yard. The cost of ballasting on those lines is, so far

as you know, fairly illustrative of the cost of ballasting in this state?

A. No, sir; not at all.

Q. It comes a good deal nearer being illustrative of the cost of ballasting in this state than the expense incurred by the Company in ballasting out in the mountainous region, doesn't it?

A. We haven't any of the mountain ballasting in this statement.

The MASTER: Why were they selected by you, in this Ex. 6?

WITNESS: I took all of the ballasting done on construction from the date of 1901, beginning with the Brookston-Ellis line. I didn't pick out selected cases. I took all of the ballasting that had been done as a construction matter from that time.

Q. Do you remember the average amount or the average unit price used by the engineer for the state in his estimate of the cost of reproduction of your road?

A. He didn't give it that way. He gave it so much per mile, and I think it was about 45 cents.

Q. 45 cents?

A. I am talking of it in connection with his Northern Pacific testimony.

Q. You are correct as to the unit price; and the unit price on these two examples in Minnesota in the last ten years is 46 cents per yard?

A. I haven't made that computation but it is probably in that neighborhood.

Q. And the price that you have put in and claim in this state is 62 cents?

A. 62 cents.

Q. Now, I want to call your attention, for just a moment, to Ex. 7. In your Ex. 2. which embodies the estimate of the cost of reproduction made by you, you put in the cost of tracklaying and surfacing at $835 per mile, did you not?

A. That is true.

Q. That, like the cost of ballasting and of grading, was not taken from your records, but was your opinion as to what it was worth?

A. Yes, sir; my judgment based on my experience.

Q. In connection with that testimony you also furnished the Court with an exhibit to serve the same purpose as to track-laying and surfacing as Ex. 4 was intended to serve as to grading and Ex. 6 as to ballasting, did you not?

A. Yes, sir.

Q. Which contained instances of actual track-laying and surfacing done by the Company in construction since 1898?

A. Yes, sir; it covered all of the construction and track-laying done from that time.

Q. And on that exhibit you had how many Minnesota examples?

A. Six.

Q. And in Ex. 7 Corrected, which you have now furnished the Court in connection with your last testimony, there are the same Minnesota examples?

A. Yes, sir.

Q. What did your original Ex. 7 show to be the average cost per mile in the experience of the Company shown by that exhibit for track-laying and surfacing?

A. $904 per mile.

Q. Your method of reaching the cost of track-laying and surfacing on the Minnesota examples, mentioned in your original Ex. 7, was criticised by Mr. Morgan in his testimony, the same as he criticised the unit prices in grading and ballasting?

A. Yes, sir.

Q. And he claimed, as he did in those cases, that you did not use the proper method of computation to get at the correct unit price for track-laying and surfacing?

A. Yes, he criticised particularly the mileage, that the correct mileage had not always been used that was represented

by the charges; and also that there were some charges to track-laying that should be to ballasting, and vice versa.

Q. But, in the main, his complaint was that you had taken the total cost of track-laying and surfacing in the instances where you had mentioned Minnesota construction, and that in dividing the total cost by the mileage to get at the unit cost per mile you had used too small a mileage, and had therefore obtained an abnormally high unit cost per mile, didn't he?

A. Yes, sir; that in connection with the charges which he thought were not quite correct.

Q. And to some extent his criticism was true, was it not?

A. Yes, sir.

Q. And it was for that reason that you have furnished this corrected Ex. 7?

A. Yes, that is right.

Q. On your corrected Ex. 7 you do not agree with Mr. Morgan's figures, but you do get in the Minnesota instances (some of them, at least,) a lower unit cost per mile for track-laying and surfacing than you had on the original Ex. 7?

A Yes,. sir; that is true.

Q. The general character of Mr. Morgan's complaint against Ex. 7 was the same as the character of his complaint against the other two exhibits?

A. Yes sir; I think he distinctly stated that it was not a mistake in the construction books so much as the analysis which had been made; and that, as I explained before, was brought about by the matter not having been given the time that it required to produce these results.

Q. Now, the material for the original Ex. 7 was taken from your records, as well as the material for corrected Ex. 7, was it?

A. Yes, sir.

Q. And after you have corrected your Ex. 7 so as to reveal the error in the original exhibit, has it changed your opinion

as to the cost of track-laying and surfacing per mile that ought to be included in your Ex. 2, the estimate of the cost of reproduction of the road in this state?

A. No, sir.

The MASTER: Why not?

WITNESS: It is still higher than the price which we have used.

Q. Now, in that same connection, and following the question of the Master, I will ask you to take the Minnesota instances or examples appearing on Ex. 7 and tell us what the average cost in this state in those cases was, according to your present figures, for track-laying and surfacing.

A. It is $660 per mile, after deducting for the switches.

Q. Well, you don't deduct anything that ought to go in; you have deducted switches that were accounted for otherwise, haven't you?

A. Yes, sir.

The MASTER: And what is it per mile in Ex. 2?

WITNESS: $835.

Q. Now, Mr. Morgan in his estimate puts in $507 per mile for track-laying and surfacing, does he not?

A. It may average that. I think for the Great Northern System he used $500 a mile for certain lines, and $600 a mile for a few, I think those were between St. Paul and Minneapolis.

Q. According to Mr. Morgan's analysis of the items which were used to make up your cost of track-laying and surfacing in this state, the figures which you have given here on your Corrected Ex. 7 would still be too high; that is, if his method was to be adopted? You haven't followed his method in making these corrections?

A. I think we have.

Q. Have you followed his figures?

A. We followed his method. We have not always followed his figures, because he wasn't always right in them, but his method was all right.

Q. Now, we have referred several times, Mr. Hogeland, to the case of State v. Steenerson (to the Steenerson case, so-called) tried in this state in the year 1895, and which was a contest as to the reasonableness of rates fixed by the Railway Commission of this state for the Great Northern road; it was a contest between the Road and the State on that question of reasonableness. You testified in that case, did you not?

A. Yes, sir.

Q. You were at that time in the engineering department of the Great Northern Railway, or, as it was then called the St. Paul, Minneapolis & Manitoba Railway, and had been for a good many years prior to that?

A. Yes, sir.

Q. In that case estimates were made on behalf of the Great Northern Company, under its then name, purporting to show the cost of reproducing the road in this state, showing unit prices for the various kinds of work and material that entered into the road, were there not?

A. Yes, sir.

Q. One of those estimates was made by William Crooks, and was marked in that case Ex. F, another was made by Mr. D. C. Shepard, of this city, who is the Complainant in the Northern Pacific case in this litigation, and his estimate of the cost of reproducing the St. Paul, Minneapolis & Manitoba Railway in Minnesota, showing unit prices was marked in the Steenerson case Ex. G. You remember that circumstance, do you not?

A. Yes, sir; I remember it.

Q. And when you testified in the case, Ex. G, which I have just now referred to, (being the estimate made by Mr. Shepard) was shown you and you were asked by counsel whether you had made an examination of it, to which you answered that you had; you were then asked, "Are the estimates of cost as stated in Ex. G, in your judgment, reasonable and fair at the

present time?" to which you answered, "Yes, sir; I think they are." Was that the question asked you and the answer given by you in that case?

A. I would have to be guided altogether by the record. I have no doubt it was that way.

Q. That is what the record discloses. What position did Col. William Crooks occupy with the Manitoba road at that time?

A. I think he was right-of-way agent; I am not positive.

Q. He is the one who compiled Ex. F in the Steenerson case, and no doubt conferred with you in so doing, did he not?

A. We prepared certain data for both Col. Crooks and Mr. Shepard as to mileage, number and kinds of bridges, culverts, buildings, etc., but did not prepare any unit prices.

Q. But where unit prices appear in his exhibit, then, they were not prepared in consultation with you?

A. No, sir.

Q. But you did examine the unit prices in Mr. Shepard's exhibit and approved them in your testimony?

A. I think the record shows, as you read it, that the exhibit was shown me and I said I saw it that morning, and I was asked if it was, in my opinion, reasonable and fair, to which I replied yes. I didn't say it was correct.

Q. Well, reasonable and fair as to unit prices, of course, is what you meant?

A. Well, "reasonable" might have considerably different meanings.

Q. Well, what did you mean by that?

A. The record ought to stand just as it is.

Q. What did you mean when you said those unit prices were fair?

A. It is too long ago to know what I might have meant, but the record simply should stand, I think, as it is.

Q. Well, when you testified that you believed that the unit

prices disclosed by that exhibit were fair and reasonable, you meant that, didn't you?

A. I presume so; yes, sir.

Q. You didn't mean that they were not fair and reasonable when you said that they were, did you?

A. "Reasonable and fair" it seems to me is different from "correct." They were certainly reasonable, as far as they were not overestimated.

Q. That evidence was offered on behalf of your Company in a rate case where it was contesting with the State as to the reasonableness of a rate, was it not?

A. I think that is correct.

Q. Well, now, what connection did Mr. Crooks, who presented Ex. F in that case, have with the construction of the Great Northern Railway, or as it was then known, the St. Paul, Minneapolis & Manitoba Railway?

A. He had been connected with it in early days, but his connection didn't cover very much mileage.

Q. He had constructed a portion of the road?

A. As chief engineer, in early days; yes, sir.

Q. What connection did Mr. Shepard have with the construction of the road, if any?

A. No connection in an official capacity, but in those days he—

Q. He was a railroad builder, wasn't he?

A. He was a contractor who had built a good deal of it.

Q. Had built a good deal of the Great Northern System?

A. He had built some of it in Minnesota.

Q. And had built other railroads in Minnesota, also?

A. I think so; yes, sir.

Q. So that he was fully qualified to testify as to unit prices and the value of materials that would enter into the road?

A. I think he was fully qualified so far as contract work was concerned; I don't know what experience he had had to qualify

him as to the additional things that should be added to contract prices.

Attorney General YOUNG: I will offer in evidence in this case Exs. F and G, which were offered and received in the so-called Steenerson case, in the District Court of Ramsey county in this case. I thought I would let the Reporter copy into the minutes both those exhibits.

Mr. HOW: That will be all right.

Q. In the estimate of the cost of reproduction which was designated Ex. G in the Steenerson case and which by your testimony in that case you approved,—

A. No, sir; I didn't approve it.

Q. Well, leave that out, then.

A. I want you to stick to the record.

Mr. HOW: Why don't you stick to the record, why do you misquote him?

Mr. DURMENT: There isn't any misquotation; it is a fair deduction of what the record shows.

Mr. HOW: Stick to the record. I insist that the witness shall be treated fairly. He seems to be able to take care of himself, but I don't want to sit here and submit to it, myself. I want to be treated fairly.

Attorney General YOUNG: I submit, your Honor, there is no unfairness in suggesting that he approved of it, but leave that out altogether.

The MASTER: Very well.

Q. In Ex. G, which was referred to by you in your testimony in the Steenerson case, being the estimate made in that case by Mr. D. C. Shepard, the cost of track-laying and surfacing in Minnesota was put at $400 per mile, was it not?

A. Yes, sir.

Q. And in Ex. F, being the estimate of William Crooks, former chief engineer of the Company, track-laying and surfacing was put in at $375 per mile, was it not?

A. It appears so from the record.

Attorney General YOUNG: I will ask the Reporter to incorporate those two exhibits (F and G) in his report of the evidence for today.

Said exhibits are as follows:

PLAINTIFF'S EXHIBIT F.

William Crooks: Estimated cost of reproducing the railway of the Saint Paul, Minneapolis and Manitoba Railway Company in Minnesota, including terminals at St. Paul and Minneapolis.

Main track, including second, third, fourth, fifth and sixth tracks between St. Paul and Minneapolis	1,382.21 miles
Sidings, spurs, etc.	249.16 "
Clearing, 9,240 acres, at $30	$277,200
Grubbing, 308,000 square rods, at $1	308,000
Grading, earth and rock work, 19,750,000 cubic yds, at 28 cts.	5,530,000
Grading, 12,900 000 cubic yds. sidework, at 12 cts.	1,548,000
Retaining and slope walls, rip-rap, ditching, draining, etc.	666,000
Iron bridges	308,000
Wooden bridges	858,000
Stone and pipe culverts	98,000
Timber culverts	200,000
Cross ties, switch ties, etc., 4,500,000, at 55 cts.	2 475,000
Steel rails, 160,000,365 grop. tons, deliv. at St. Paul, at $25.25	4,049,216
20,000,000 lbs. angle bars, deliv. at St. Paul, at $1.30 per cwt.	260 000
9,800,000 lbs. track spikes, deliv. at St. Paul, at $1.68 per cwt.	164,640
2,600,000 lbs. track bolts, deliv. at St. Paul, at $2.02 per cwt.	52,520

Track laying and surfacing, 1,631 miles, at $375 per mile	611,625
Ballasting, 900 miles, at $1,600	1,440,000
Frogs, switches, sign-board, crossing signals, services, etc.	250,000
Telegraphs, 1,332 miles, at $200 per mile	266,400
Fences, snow protection, etc., 1,200 miles, at $200.	240,000
Engine houses, coal chutes, sheds, etc	275,000
Turn tables (wood and steel)	45,000
Shops at St. Paul, equipped	380,000
Shops at St. Cloud, equipped	140,000
Shops at Barnesville, equipped	75,000
Depot buildings	300,000
Section houses	125,000
Water tanks and water supply	170 000
General office building at St. Paul	395,000
Freight houses, St. Paul	40,000
Freight houses and improvements at West Minneapolis	500,000
Improvements in East Minneapolis	370,000
Transportation of men, materials and supplies	1,000,000
Equipments, consisting of locomotives, engines, cars and all rolling stock, 1,382 miles, at $3,500 per mile	4,837,000
Engineering, legal expenses, superintendence and contingencies, 10 per cent	2,922,960
Right of way other than between St. Paul and Minneapolis, 19,281 acres, at $50 per acre	964,000
Depot grounds, 1,800 acres, at $500 per acre	900,000
Gravel pits, 657 acres, at $150 per acre	65,700
Yards at division points, 480. acres, at 150 per acre	360,000
Total	$33,467,311

Value of terminal grounds and interest, St. Paul and Minneapolis to be added.

PLAINTIFF'S EXHIBIT G.

D. C. Shepard's estimate of cost of reproducing the St. Paul, Minneapolis and Manitoba Railway in Minnesota, not including the right of way and terminals in the cities of St. Paul and Minneapolis:

Main track	1,382.21 miles
Side track	249.16 "
Clearing 9,240 acres at $30 per acre	$277,200
Grubbing, 150,000 square rods	150,000
Grading, 24,650,000 cubic yards, earth and rock at 24 cts.	$5,916,000
Grading, 8,000,000 cubic yards earth (side work) at 14 cts.	1,120,000
Retaining and slope walls, rip rap, ditching, etc.	300,000
Iron bridges	308,000
Wooden bridges	858,000
Stone and pipe culverts	98,000
Timber culverts	200,000
Cross, switch ties and headblocks, 4,500,000 at 48 cts.	2,160,000
Rails, 160,365 tons at $27 per ton	4,329,855
Angle bars, 20,000,000 pounds	234,000
Track spikes, 9,800,000 pounds 1.8 cts.	176,400
Track bolts, 2,600,000 pounds at 2.6 cts.	67,600
Track laying and surfacing 1 631 miles at $400	652,400
Ballasting, 900 miles, at $1,300 per mile	1,170,000
Frogs and switches, sign boards and crossings	250,000
Telegraph line 1,332 miles at $200 per mile	266,400
Fences. snow protection, etc., 1,200 miles at $200	240,000
Round houses, sheds, etc	260,000
Turn tables	45,000
Shops at St. Paul	380,000
Shops at St. Cloud	140,000

Shops at Barnesville		75,000
Depot buildings		300,000
Section houses		125,000
Water tanks and water supply		200,000
Coal sheds		30,000
General office building, St. Paul		395,000
Freight houses, St. Paul		40,000
Freight houses and improvements, west Minneapolis		500,000
Improvements at east Minneapolis		370,000
Equipment, engines, cars and all rolling stock, 1,382 miles at $4,000 per mile		5,528,000
Transportation of men and materials		700,000
Total	$27,861,855	
Add 10 per cent for engineering, legal expenses, superintendence and contingencies		2,786,185.50
Right of way, 19,280 acres at $65 per acre		1,253,200.00
Depot grounds, 1,800 acres at $700 per acre		1,260,000.00
Gravel pits, 657 acres at $100 per acre		65,700.00
Yards at division points, 479 acres at $700 per acre		335,300.00
Total	$33,562,240.50	
Interest charge during construction, commissions and discounts, 10 per cent of above		3,356,224.05
Grand total	$36,918,464.55	

Recess until 2 p. m.

AFTERNOON SESSION.

RE-DIRECT EXAMINATION.

By Mr. How:

Q. Mr. Hogeland, I call your attention to your second amended Ex. No. 4. General Young has seen fit to segregate the examples of Minnesota construction or construction within the state of Minnesota that you have included in that exhibit, and to ascertain that the average cost per yard, including the contract price and all other charges for Minnesota construction, is 31.2 cents per yard, and he has seen fit to compare that 31.2 cents per yard for Minnesota construction as shown upon your second amended Ex. No. 4 with 33.8 cents per yard estimated by you in your general estimation of the cost of construction in the state, which I think is your Ex. 2. I observe that perhaps 80 per cent of the total yardage attributable to Minnesota in your Ex. No. 4 was moved under construction in the year 1898 and 1899. I ask you, what, if any, bearing that fact has, that is, the time during which that construction went on, what bearing, I say, that fact has upon the situation and upon the propriety of the comparison.

A. It has this bearing: grading done ten years ago was done at considerably less price than at the present time and for all of the yardage in the first two items of second amended Ex. 4 (being about 80 per cent of the total Minnesota yardage) the prices paid contractors are at least 20 per cent lower than they would be at the present time. This, alone, accounts for the difference between the average cost per yard of all the Minnesota lines and the average price per yard used in my Ex. 2.

Q. Now, I call your attention to your Ex. 51, which purports to be a statement showing quantities moved by and prices paid to contractors for grading of which vouchers are on file, and which covers a period between 1871 and 1907; the different sections are segregated, and the amount of yards moved and

the price paid is set opposite the section and the section name; but they are not placed in chronological order. Have you made any segregation, by periods of time, which you think will illustrate and justify you in your statement that prices ten years ago were lower than they are at the present time?

A. Yes, sir.

Q. Will you state the result of that separation and comparison?

A. I have drawn off from Ex. 51 the items of construction, first, between the years 1896 and 1901, inclusive; and, second, between the years 1902 and 1907, inclusive. I have made that separation because, in my opinion, the first mentioned term covers a much lower price period for contract work than the succeeding period or the later period. The result of that shows that there were moved in the first period (1896 to 1901, inclusive,) 8,044,676 cubic yards, at a total cost, as paid to the contractors, of $1,597,850.04; or an average price paid to contractors of 19.9 cents per cubic yard for all materials, or 18.1 cents per yard for earth, 38.7 cents per yard for hard-pan, 44.5 cents per yard for loose rock, and $1.01 per yard for solid rock. The second and later period, (from 1902 to 1907, inclusive,) covers the moving of 1,932,138 cubic yards, at a cost as paid to contractors of $587,827.50, or an average per yard for all materials as paid to contractors of 30.4 cents, or 28.4 cents for earth, 40.5 cents for hard-pan, 41.6 cents for loose rock, and $1.02 for solid rock. The comparison between the average price per yard as paid contractors for these two periods covering all classes of material is 19.9 cents per yard for the first mentioned period (1896 to 1901, inclusive); and 30.4 cents per yard for all materials for the second mentioned period, 1902 to 1907, inclusive, or an average increase of practically 50 per cent.

Q. Now, in your judgment, based upon your experience, has there been an increase and a decided increase in the cost of labor and materials, and. in general, in the cost of railway con-

struction work, during the past ten years?

A. Yes, sir; a decided increase.

Attorney General YOUNG: You are applying this to the grading?

Mr. HOW: To the grading, yes.

WITNESS: A decided increase.

Q. And do you think that that exhibit and your analysis of it demonstrates that fact?

A. Yes, sir.

Q. To your satisfaction?

A. Yes, sir.

Q. And fully justifies you in that statement?

A. Yes, sir.

Q. Now, I would like to ask you about ballasting and especially in regard to your Ex. 6 as corrected, and the item on there Brookston to Ellis, in 1901. I think perhaps this should have been covered in your direct examination but I will ask you now to explain the facts and state why the figures show what they do on your Ex. 6 with regard, especially, to that item.

A. On Ex. 6 Corrected, the first line, Brookston to Ellis, shows 262,407 cubic yards of ballast put in and the total charges $119,469.02. This is more ballast than there is in that line. Mr. Morgan in his valuation has allowed about 122,000 yards of ballast in that line. He has allowed $54,888.22, as the value of the ballasting on that line. We, in our Ex. 2, have allowed 143,100 cubic yards, amounting to $88,722. (Ex. 2, item 6.) This bears out my contention that there is not 262,407 cubic yards of ballast, but that a considerable portion, more than half, of that yardage was bank-widening. That yardage was put in, and at the cost as shown, $119 469.02, but only a part of it went for ballasting, although the charges in the books show it as going to ballasting. If it had been put in as ballast it would have lifted the track up between two and three feet. As a matter of fact, more than half of it was used for bank-

widening, simply plowed off of the cars, requiring no labor, therefore done at much less than the average cost per yard, and the balance of it was used for ballast in which the labor of putting it under track and tamping the track entered in, and that part of it so used for ballast was at a considerably greater cost than the average; I make it about 60 cents per yard.

Q. Why was not the yardage used for ballast separated from that used for widening the embankment?

A. I can't tell you; it was not returned in that way when the returns were made.

Q. Could it have been done?

A. It would have been difficult, but it could have been separated arbitrarily.

Q. But, as I understand it, they just simply moved that number of yards, only a part of which they needed for ballast, and why did they use that material for widening of the embankment?

A. Because the banks were not of proper width for the ballast.

Q. Well, why did they use that material, I mean.

A. Because it was the handiest material that could be secured.

Q. At that particular place?

A. Yes, sir.

The MASTER: They used ballasting for embankment, is your theory?

WITNESS: They used this material, gravel material, largely for embankment, and, as I stated in the first part of my answer, that is borne out by the amount of ballast which Mr. Morgan has returned for that line, (about 122,000 yards) and the amount which we claim in that line, 143,100.

The MASTER: So that your original Ex. 6 in that regard is more accurate than this?

WITNESS: Yes, sir. That was where we made our mistake

in the first exhibit, and Mr. Morgan called our attention to it that we put the total charges that our books showed to ballasting against the yardage which we claimed was in that line as ballast, that we didn't use all of the yardage that was handled for those charges. Therefore, we have corrected this Ex. 6 to correctly set the charges, $119,469.02 against the yardage handled, 262,407 yards knowing very well that that is not all ballast, but at the same time it is the only means we have now of striking an average price per yard for that material.

Q. And knowing that this per yard charge of 45.6 cents, as it now appears on your corrected Ex. No. 6, does not show, nor begin to show, the actual cost of that ballasting to your Company?

Attorney General YOUNG: Oh, that isn't true.

Q. Ballasting upon that line per yard to your Company?

A. As ballast, that is correct.

The MASTER: It seems to me this first line is incorrect as you have it here.

WITNESS: After I found these discrepancies I would like to have left that line out but I knew I would have been accused then of being unfair, so rather than do that, I put it in just as it shows.

The MASTER: Half of that should go to embankment and be charged accordingly, and then the 143,100 would have been a proper divisor?

WITNESS: No, I don't think that is quite right, because there has been some more ballast put in that line since.

The MASTER: Well, that may be, but I assumed that because you used that expression 143,100 as ballast that had been put in there was probably the original ballast. I think I understand the situation.

WITNESS: The proper method would have been, at the time the work was done, for the engineers to have separated the amount which was used for bank-widening and the charges ap-

pertaining to that yardage, and then the yardage used for ballasting and the charges appertaining to that—which was not done.

Attorney General YOUNG: But the total cost for both bank-widening and the ballasting being already shown in the final column?

The MASTER: Yes, that is true.

Attorney General YOUNG: They had to use the total yardage as a divisor.

The MASTER: Yes, that is true, but it is all wrong.

WITNESS: It don't correctly show the cost per yard of ballasting on that line; therefore, I don't think it ought to be used separately in the way that Mr. Young has used it

Mr. HOW: Yes, that is what I wanted to show.

The MASTER: Yes, I see, under that explanation.

Q. Now, also, with regard to Ex. 6 as with regard to Ex. 4, General Young has been pleased to segregate the examples of ballasting that appertain to the state of Minnesota by themselves; there are only two such examples, being the Kelly Lake to Nashwauk line and the Brookston to Ellis line. Now, can you, with all your experience being given the cost of ballasting a portion of a line of railroad in the state of Minnesota, North Dakota or Montana, or Washington, or Oregon, estimate with any fair accuracy what it will cost to ballast another line of railway in either one of those states?

A. It would form a basis, but not nearly so good a basis as though you could take a larger mileage and different conditions, so as to strike an average from a large number of cases, rather than to take one separate case, which might be either too high or too low for an average.

Q. That is what I mean. Well, now, do conditions differ with regard to ballast according to state lines or according to general localities?

A. No, it depends on the location of the gravel-pits more than any other thing.

The MASTER: There is a pretty wide difference, though?

WITNESS: Yes, sir; that is the reason why I say it is unsafe to take any one line and draw conclusions; that it should be spread over as great a mileage as possible, then I think you can draw pretty safe conclusions.

Q. Well, I see from this exhibit that there are three lines in Washington Curlew to Midway, cost 46.3 cents per yard; Molson to Oroville, Washington, cost 60.2 cents per yard, and Marcus to Republic, Washington, cost 64.5 cents per yard; I take it that that demonstrates that you cannot say that ballasting in any one state is cheaper than it is in another state merely because it is in the state.

A. No, as I said before, it depends on the location of the gravel-pits, and I might add to that, the season of the year and the general conditions as to labor, other traffic on the line, etc., that would naturally increase or decrease the expense of the work.

Q. So that you cannot tell, from the examination of any one example what the rule would be in that state with regard to ballasting?

A. Not at all.

Q. Have you on any one of your exhibits any line that you consider typical with regard to expense of construction?

A. Why, I consider the line built during the last two years in Montana, called our Billings & Northern, marked on the exhibits Armington to Laurel about as typical as any.

Q. The expense of ballasting that was the heaviest on your Ex. 6?

A. Yes, sir; and that is pretty largely due to labor conditions last year; at a time when we thought they would be good they proved anything but good.

Q. But, in general, do you consider that a typical line in regard to the expense of construction, not only ballasting, but grading and other elements?

A. I think it represents pretty closely what the work would cost now, although the ballasting is a good deal higher than I have used.

Q. What is your information as to just what measurements Mr. Morgan made on his trip of inspection over your line? He was accompanied by one of your assistants, I believe,—at least one?

A. Yes, sir; there were two, I think, assistants with him. Do you refer altogether to grading?

Q. I refer particularly to grading.

A. As I stated yesterday, he made stops about every two miles, although I understand, from further talk with one of the assistants who accompanied him, that in many instances the stops were about five miles apart, and at these stops the width of the ballasting at the top was measured and the width of the roadbed at the base of the ballast was measured. So far as the grading was concerned those were the only measurements that were taken.

The MASTER: Wasn't that sufficient for the purpose?

Mr. HOW: I am getting at that.

Q. Could you, as an engineer, or can any engineer, in your opinion, make a reasonably accurate estimate of the yardage in an embankment having no information excepting the profile and the width of the top of the embankment, and without special information with regard to the slopes?

A. No, sir; it would be necessary to know, in addition to the width of the roadbed, the depth of cutting or fill, and the slopes.

Q. How do the slopes vary in railway embankments?

A. They usually vary between one and one-half to one, and one and three-quarters to one. That means one and a half horizontal to one vertical, or one and three-quarters horizontal to one vertical. That is for embankments. In excavations, it depends on the nature of the material, generally varying from a

slope of two to one to a quarter to one; that would be for rock.

The MASTER: I had in mind an embankment, when I spoke, because it would seem to me that measuring the top and the bottom of an embankment would give you the contents practically.

WITNESS: He did not measure the bottom, he simply measured the top.

The MASTER: I didn't understand you so in your testimony.

Mr. HOW: Yes, that was the testimony. He measured the top of the embankment at the bottom of the ballast.

WITNESS: Of the ballast.

The MASTER: Oh, I didn't get the testimony right in my mind.

Mr. HOW: At the bottom of the ballast.

Attorney General YOUNG: He said the base.

Mr. HOW: At the base of the ballast, I think he said.

The MASTER: I thought it was at the base of the embankment.

Mr. HOW: No, at the base of the ballast.

The MASTER: That is a different proposition.

Q. Do you consider, from your experience, that it was within the power of an engineer to tell a slope by eye-sight as he passed over it, what it is, the measurement of it?

A. No, sir.

Q. How was information in regard to slopes obtained for the purpose of making your estimate with regard to yardage?

A. It was not necessary for us to know the slopes except where we made our estimate from profile; and, in such cases, as far as possible, the estimate was made by the engineer who was located on that district and knew the slopes. Where we did not have them made that way we sent out and had the slopes measured.

Q. By cross-section?

A. By cross-section, so as to get fair averages for the slopes.

The MASTER: Would your slopes for embankment be practically the same as slopes for a cut?

WITNESS: No, sir; very often the slopes in cuts are made either steeper or flatter than the embankments adjacent.

The MASTER: That would depend on how much slope you wanted to use, wouldn't it?

WITNESS: It would depend somewhat on the amount of material you wanted to take from the cut, whether or not you wanted to leave it in better protection for snow or for drainage.

Q. And also upon the character of the material, wouldn't it, somewhat?

A. And the character of the material.

Q. Now, you have had in preparation of your estimates and your exhibits, in making computations, etc., the assistance of several subordinate members of your department; I think you have testified to that?

A. Yes, sir.

Q. Will you produce anybody who has assisted you or who has made computations for you or who has done work for you in the preparation of these exhibits, any of them, for cross-examination, if the other side will ask for them?

A. Yes, sir; I will be very glad to.

Q. Now, in order that there may be no final misunderstanding about that, I want to look at your Ex. 3 and ask one question in regard to it. Your Ex. 3 is entitled "Statement showing sources from which grading quantities for lines in Minnesota were compiled." Now, I take, for instance, Section No. 36, Cloquet to Deer River, that shows, under the heading "Quantities for which contractors were paid upon original construction" 209,355 cubic yards; under the head of "Profile estimate," 774,839 cubic yards; under the head of "Extra work on record," 1,276,013 cubic yards; and under the heading, "Extra work not on record," 9,193 cubic yards. How many miles of line are there in that section, Cloquet to Deer River, approximately?

A. There are 86.12 miles of main track.

Q. Now, finally, in order that it may be clear to the Master, let me ask you whether the yardage, or any of it, included under the heading "Quantities for which contractors were paid on original construction," applies to the same mileage as any of the yardage in "profile estimate 774,839 yards."

A. Yes, sir; it applies to part of the same mileage.

Q. I ask you if any of it is a duplication, one yardage of the other.

A. No, sir.

Q. Is that so with regard to any item under any heading, is it a duplication to any extent of any other item under any other heading in that exhibit?

A. Not to my knowledge.

The MASTER: Take those two first columns, profile estimate and original amount paid on contracts, does that apply to the same part of the mileage?

Mr. HOW: The same mileage.

The MASTER: The same mileage. I understood you to say yesterday—

Q. I understood that was your answer.

The MASTER: That a part of it applied to one portion of the mileage and the other part of it would apply to a certain other part of the mileage?

WITNESS: That was true in one case we were considering yesterday, but the case that Mr. How mentions now I would like to explain.

Mr. HOW: Perhaps I took an unfortunate example, then.

The MASTER: You took just the right one.

Mr. HOW: I am very glad to have him explain.

WITNESS: Section 36, Cloquet to Deer River, we show 209,355 cubic yards, quantities for which contractors were paid on original construction. That covers work done by contractors on that line after the Great Northern Company secured it. I

will explain that a little further after I have explained the profile estimate. The next quantity, 774,839 cubic yards, profile estimate, is an estimate made from the profile of that line as it was turned over to us in about 1897. Originally it was the Duluth & Winnipeg.

The MASTER: Before this contract work was done?

WITNESS: Before the contract work was done.

The MASTER: And this profile work has been increased ten per cent?

WITNESS: Yes, sir. There was 10 per cent put in there to cover whatever settlement would take place, over and above what would be taken off of the profile quantities. After the line was turned over, there were some changes made in the way of taking out curvature, by contract. That is covered by the first item, 209,355 cubic yards. Then, since that time, up to the present time, there has been steam-shovel work done on that line, in the way of bank-widening, bridge-filling, additional side-tracks, double-tracking, amounting to 1,276,013 cubic yards, which we have on record. In addition to that I have put in a small item, 9,193 cubic yards, as extra work not on record, covering whatever work might have been done by section men and extra gangs, in the way it was explained yesterday, and not reported and placed on record.

The MASTER: Then this item is quite different from any of the other items, at least from most of the other items, in that all of this work applies to the entire mileage where we have profile work and contract work together?

WITNESS: Yes, sir; but it illustrates the method that we pursued in not duplicating quantities.

The MASTER: Yes, I understand.

Q. I didn't know that it was an exception to the rule when I selected it. I selected it because it had something under each heading.

A. I don't think you could say there was any rule, because

each particular line had to be treated in the best way that we could, the idea being to take the quantities from our records as far as possible and to make as few profile estimates as we could, because we all know that a profile estimate is a last resort; it is not very accurate, as I would like to explain to the Master from the profile which I brought here.

The MASTER: I understand your profile estimates however, never apply where your contract estimates are found, except in some exceptional case like this?

WITNESS: That is, there is no piling of one on the other; no, sir.

The MASTER: It applies to different parts of the same mileage?

WITNESS: Yes, sir.

Mr. HOW: Would the Master like to look at the profile?

The MASTER: No, I don't care; I think I understand. Well, just throw it open, Mr. How.

(The Master looks at the profile produced.)

WITNESS: The black line is the surface line, and the red is the grade. These are 100 feet, each of those. Each of those is a foot; that is five feet. Now, you can see the difficulty in taking off quantities.

The MASTER: There you would have practically 300 feet?

WITNESS: No, this is distance, this way. That is height in feet.

The MASTER: Oh, yes, I see. I see the scheme.

Mr. HOW: And the width of the embankment or the slope is not shown.

The MASTER: Yes.

Q. Now, to a profile estimate, have you, in any case, added more than the customary ten per cent for settlement?

A. No sir; not to my knowledge.

Q. That settlement takes place, I take it, after the construction of the line, and is caused, perhaps, by heavy impact of

heavy locomotives and conditions of weather, and such things?

A. Yes, sir; and the natural compressibility of the soil on which the embankment rests.

The MASTER: Doesn't that vary a great deal?

WITNESS: It varies a great deal.

The MASTER: But you have used 10 per cent constantly, as I understand, in these figures?

WITNESS: Yes, sir.

The MASTER: Without regard to that?

WITNESS: That was done because it has been considered a fair percentage to add.

Q. Is it, in your experience, a customary percentage?

A. Yes, sir; it is a customary percentage.

Attorney General YOUNG: There is no controversy in this case about that.

Mr. HOW: No, I don't think there is, but there was one question you asked I thought might bear on the valuation,—that you thought he might have added more than 10 per cent in some cases.

Q. Recently, Mr. Hogeland, some experts of the Interstate Commerce Commission have been at work upon your records; how long have they been so at work?

A. About three months.

Q. How many of them were there on an average?

A. Sometimes there were three, and sometimes, I think, seven or eight men; I should say on an average about five men.

Q. Under whose direction was their work performed, if you know?

A. Under Mr. Morgan's direction, as I understand.

Q. What did you learn, from time to time, with regard to their views as to your analysis of accounts and separation of your charges, etc.?

Attorney General YOUNG: That is objected to as mere hearsay. Now, if your Honor please, I think it appeared from Mr.

Morgan's testimony that about the time that his connection with the State ended he was temporarily employed by the Interstate Commerce Commission to make some investigations for them; his work prosecuted under his authority from the Interstate Commerce Commission had nothing whatever to do with any work done for the State, and we had no access to it, asked nothing about it, knew nothing about it, and there is none of it shown here. It seems to me to introduce into the case at this time anything that those employes of the Interstate Commerce Commission might have said to Mr. Hogeland with reference to the character of their work would be mere hearsay and would not be a proper basis for drawing any conclusion in this case. What Mr. Morgan may have said would be proper while he was working for the State or with reference to anything that he disclosed while working for the State.

The MASTER: Do you consider that competent testimony, Mr. How?

Mr. HOW: I do. I will make it material.

The MASTER: How?

Mr. HOW: Well, what I propose to show is that the experts, under the direction of Mr. Morgan called Mr. Hogeland's attention to various matters which they criticised with regard to the analysis of his charges, etc. I propose to show that each and every one of these last exhibits that Mr. Hogeland has offered in this case, last Friday, regarded each and every such criticism and disregarded none, and that so far as Mr. Hogeland knows, his present exhibits are made up upon a basis that is perfectly satisfactory to Mr. Morgan and the employes of the Interstate Commerce Commission. I offer the testimony.

The MASTER: Of course, I can't rule on it, but—

Mr. HOW: I am going to insist upon the testimony.

Mr. DURMENT: I want to suggest, right here on that point, conceding it to be true that investigation was being made for the purpose of determining an average or a constant for the

regulation or reproducing a system throughout a number of different states in the Union, and the mere fact that the classification they have made for this case, which applies to Minnesota only, was not suitable or proper or fair as a classification for the entire line, won't justify any claim or inference that it should have been changed for Minnesota to suit the requirements of the entire line. It does not follow at all that it has any effect upon Mr. Morgan's report or his figures or that it has any bearing in this case.

Mr. HOW: Will it not have some weight with any reasonable mind, Mr. Durment, on the proposition as to whether or not Mr. Hogeland has tried to be fair in making these subsequent statements?

Mr. DURMENT: No, I don't think so. I don't think that your question would have any tendency that way.

Mr. HOW: Well let me get along, I am going through with it. I am going to insist upon the testimony.

The MASTER: I think you might call any of those gentlemen, probably, for the purpose of showing that there is contained here exactly what appears on their books, but I don't feel as if I ought to exercise the power of ruling it out.

Attorney General YOUNG: No, we don't want you to do that. We want our objection to appear on the record.

The MASTER: The objection is noted, and I may intimate that it don't seem to me competent testimony, but it may be, at least, I will not rule it out; I will receive it.

Last question read.

Q. In general, did they make criticisms of them, call your attention to what they considered errors?

A. Yes, sir; they did, from time to time call our attention to what they considered errors and wrong deductions that we had made, and in every instance we took their criticisms into consideration, and I think made the necessary change—I know made the necessary change, and generally in the way that they thought it ought to be.

Q. And are all those criticisms regarded in the exhibits which you have put in last Friday,—

A. Yes, sir.

Q. —your corrected exhibits—in Ex. 55, if that is it?

A. Yes, sir; all their criticisms have been regarded.

Q. Have you ever examined to ascertain whether the figures in Ex. G of the Steenerson case include all expense of reproducing the railroad covered by it, according to the standard existing in 1895?

A. No, sir; I have not.

Q. Does Ex. G contain anything for terminals in St. Paul, Minneapolis or Duluth?

A. No, sir.

Q. Since 1895 has there been any change in the standard of railroad designing and construction?

A. Yes, there have been considerable changes, and all such changes have been in the way of making a more expensive line.

Q. Are the figures of present construction cost, as submitted by you in your estimates in this case, based on a more costly standard of design in construction than those used commonly in 1895 and probably used in the Steenerson case, according to your opinion?

A. Yes, sir; because they are made to conform to the present standard.

Q. How large an increase has there been in the cost of labor and materials, in general, used in construction of a railroad, since 1895?

A. There has been a large increase in labor and an increase in most items of material.

Q. Would you be willing to venture a percentage estimate of the increase in cost of labor, taking into account its efficiency and everything, and permanency, during that time?

A. Taking into account its efficiency. I should say that there has been fully fifty per cent increase.

Attorney General YOUNG: That is increase in cost, or increase in efficiency?

Mr. HOW: Increase in cost, considering efficiency and price.

WITNESS: Both.

Q. Have you made a comparison between the cost per mile of track covered by Ex. G, as shown by that exhibit, and the cost per mile of track according to your figures as shown by your estimate in evidence in this case?

A. Yes, sir.

Q. What is the result of that comparison?

A. In order to bring the two sets of figures to a like basis for comparison, there should be taken from both the items for equipment and interest, the basis for figuring interest not being shown in Ex. G. From Ex. 2 in this case must also be taken the items for terminals at St. Paul, Minneapolis and Duluth; that is, for the land, because they were not shown in Ex. G. Computing on that basis, the construction cost in Ex. G would be about $17,200 per mile, and that in Ex. 2 in this case would be about $28,000 per mile, total miles of track being used in both instances.

Q. What proportion of that difference, in your judgment would be accounted for by the improvement in standard of railroad designing and construction since 1895 and in the cost of labor and materials since that time?

A. That would be a difficulf question to answer and to separate. It is due to both causes, the increase in the standard of construction as well as the increased labor and material cost.

Q. Well, what proportion of the entire difference do you think would be accounted for by both together, without attempting to say how much was attributable to each, if you can get it down to percentage?

A. Well, I think that would account for pretty much all of it.

Q. The examples of cost based upon your experience and

your records in your various tables, consist of several pieces of work in each case. Now, do those tables comprehend all the work done from the first date mentioned in the respective tables, or are they simply selected for the purpose of demonstrating your point?

A. Do you refer to the exhibits—

Q. Exs. 6 and 7, etc.

A. No, we made them continuous from the first date shown.

Q. Include all the work that—

A. It included all of the work as carried out as a construction matter; for ballasting they would not include the work done by the superintendent—by the operating department, but they do cover all ballasting carried out as a construction matter.

Q. I have before me what purports to be a contract between P. Brennan & Son, of the second part, and the Great Northern Railway Company, by W. P. Clough, vice-president, of the first part, dated August 30, 1892, the Steenerson case having been tried, as I remember it, in the spring of 1895. It is for track-laying on a portion of the Great Northern Railway from Thief River Falls to Red Lake Falls, in Minnesota; it provides that the party of the second part shall receive, for that track-laying per mile, $200, and, for surfacing, per mile, $200, and to be paid the cost of earth hauled on cars for grading depot grounds with 10 per cent added; it contains this provision: "The Railway Company, party of the first part, to furnish, free of charge all cars and locomotive engines required and furnish the rails, ties, spikes, angle-bars, bolts frogs and switches at the end of track to the party of the second part, free of charge, and to transport the men, tools and supplies of the party of the second part to and from St. Hilaire free of charge, and furnish train crews and motive power as required free of charge to the said party of the second part, the material used in surfacing to be taken from the sides, not hauled." I ask you whether or not, if you know, the provisions which I have just quoted from

this contract, which are upon a printed form, were customary at that time.

A. Yes, sir; that is a customary form of track-laying and surfacing contract at that time.

Q. Now, I observe that in the Steenerson case, perhaps Ex. F, the estimate for track-laying and surfacing was $375 a mile, and in Ex. G it is put in at $400 per mile. I ask you what information you get from the terms of that contract which will justify an opinion on your part as to whether the $400 a mile is intended to show merely the prevailing contractor's price at that time, or the actual cost to the Railway Company at that time for track-laying and surfacing.

A. There would seem to be no question but what Ex. G, and also Ex. F, in stating the $375 and $400 per mile for track-laying and surfacing, contemplated only the contract work and did not include the other items of cost which the Railway Company was to assume.

Q. Mr. Shepard, who prepared Ex. G, was a railway contractor at that time, I believe.

A. Yes, sir.

Q. Had been for many years. Do you happen to know that, at the beginning of the trial or taking of testimony in these cases, I endeavored to prepare certain railway contractors as witnesses in this case, Mr. Winston and Mr. Shields, and had them here for ten days, perhaps, in attendance upon the Northern Pacific case?

A. Yes, sir.

Q. What is your opinion, based upon your experience of the information or means of information which a railway contractor has as to the cost to a railway company of construction of a line of railway, over and above what is paid to the contractor himself?

A. He has very little knowledge of what the cost is to the railway company. He knows very well what the cost is to himself.

Q. Do you happen to know that these witnesses were not called upon to testify because they could not qualify to testify as to anything excepting prevailing contract prices in these cases?

A. Yes, sir.

Q. And what is your judgment as to whether or not the same condition of affairs would apply to all railway contractors in general? (I am simply trying to show that a railway contractor doesn't know anything about it excepting the prevailing contract price.)

A. I think unless a railway contractor has had some experience in railway operation, he has no means of knowing what those costs are to the railway company.

Q. The last item in Plff's. Ex. G in the Steenerson case is as follows: "Transportation of men and materials $700,000." What is your judgment as to whether or not that item was intended to cover such things as the Railroad was called upon to furnish under this contract a portion of which I have read?

A. From the wording of it I don't think it was intended to cover that, except for the transporting of men to St. Hilaire, and the freight charges on the track material which was sent there; but so far as the track-laying and surfacing itself was concerned, I don't think, from the wording of it, that it was intended to cover such.

Q. What is your judgment with regard to the sufficiency of it if it was intended to cover all such charges?

Attorney General YOUNG: He has already testified on that in the Steenerson case.

A. It is not sufficient to cover transportation and train service.

Q. Is it approximately sufficient to cover all kinds of transportation that would have to be done in construction of a railway?

A. No, I don't think it is, as it existed then.

RE-CROSS-EXAMINATION.

By Attorney General YOUNG:

Q. I believe you stated, in answer to a question put by counsel for Complainants, in relation to the actual experience of the Company in having grading, ballasting and track-laying and surfacing done, as that experience is referred to in Exs. 4, 6 and 7, that it appears that work done prior to 1901 was done at a lower cost to the Company than work done at a later period, did you not?

A. I gave that in reference to grading, Ex. 4. I didn't make a statement as to that covering the other matters mentioned.

Q. You intended it to be limited to grading?

A. I did limit it to grading then. I think to a certain extent it is true of the others.

Q. One of the principal examples given in your Ex. 4 was the grading of the line from Thief River Falls to Greenbush and from Greenbush to Warroad. That construction has been carried on since 1902, hasn't it?

A. Yes, sir; since 1902.

Q. That was between 1904 and 1906, was it not?

A. Yes, sir.

Q. The average contract price in the case of Thief River Falls to Greenbush was 16.4 cents for all material, was it not?

A. Yes, sir; 16.4 cents.

Q. And the average cost for moving all material in the grade from Greenbush to Warroad was 18.1 cents?

A. Yes, sir; 18.1 cents.

Q. Those are two of the cheapest examples of construction appearing on your exhibit, are they not, as well as being the most recent, or among the most recent, in the state?

A. No, we have some cheaper than that.

Q. Well, I say they are among the cheapest?

A. Yes, they are among the cheaper lines; yes, sir.

Q. You didn't intend to say that 80 per cent of the work appearing on Ex. 4 was done prior to 1901, did you?

A. 80 per cent of the work in Minnesota.

Q. That is what I mean. We don't figure it that way.

A. I may have been off in my figuring; I can figure it again.

Q. Mr. Jurgensen says about 54 per cent.

Col. CLOUGH: Better figure it; it will only take you a moment.

WITNESS: (After figuring.) I make it a little over 75 per cent. The work done previous to 1902 includes the first three items on Ex. 4 under "total yardage," being 3,997,170 cubic yards, for the Cloquet to Boylston and Deer River to Fosston line; 490,470 cubic yards for the Hibbing to Virginia line, and 1,069,824 cubic yards for the Brookston to Ellis line; making a total of 5,555,464 yards, which is a little over 75 per cent of the 7,326,891 cubic yards shown at the bottom of the sheet for the Minnesota lines.

Mr. HOW: My stating 80 per cent was merely a rough estimate.

Q. So far as any natural and inevitable increase in the cost of doing the work which arose between 1902 and 1907, such increase would apply to the Thief River Falls-Warroad line, would it not?

A. Yes sir; I think so.

Q. And the reason why the construction of that line appears to be low, results from the fact that it passes through a country where railroad construction can be carried on more cheaply than do the other lines that are used as examples in this state?

A. Yes, cheaper than some of them.

Q. And, as a matter of fact, the cheapness or expensiveness of the construction of a line of road depends more upon the character of the country through which it is built than upon whether it was built between 1896 and 1901 or between the latter date and 1907?

A. Yes, I think that is true.

Q. And when one line of road or any series of lines of road are taken as an example of cost for the construction of any other line of road, it is quite essential, is it not, if you are seeking to make an accurate deduction, that the character of the country through which the lines that are used as a standard of comparison be substantially the same as that in the country for which the comparison is made?

A. Yes, sir; you should take the lines of heavier construction to compare with the lines of lighter construction.

Q. For that reason it is true, is it not, that very many of the examples given upon Ex. 4, as I think you stated before, (I ask again so as to be sure) where the location is remote from the state of Minnesota and the character of the country is entirely different from anything that we have in this state, the basis of comparison is not a safe one or a fair one in order to determine the cost of construction in Minnesota?

A. Well, mile for mile; no, sir; that wouldn't be proper.

Q. Or yard for yard?

A. Yes, I think yard for yard it would be a pretty safe guide.

Q. The cost per yard differs does it not, with the character of the country?

A. Yes, but considering that there are so many of these lines in Ex. 4 in North Daokta, where the same conditions prevail that you mentioned on the Greenbush-Warroad line, I think makes it a pretty fair average.

Q. A considerable part of the cost of construction out there consisted, did it not, of transportation, and that element was considerably more than it was in the Minnesota lines?

A. A part of it, yes, sir; and the transportation would undoubtedly be a little higher for the lines farther west.

Q. But they are short branch lines, generally—those constructed in North Dakota,—they do not refer to the construction of any line of very considerable extent?

A. Well, there is one line of a pretty considerable extent and a pretty important line, the Anita to Devil's Lake line.

Q. Now, you do want to be understood as testifying, Mr. Hogeland, that the cost of construction, which would include both grading, ballasting and track-laying and surfacing, is considerably higher now than it was at the time the lines in this state were built; that is when the main lines in this state were built?

A. I think that is true.

Q. And I think you stated, if I have noted it correctly, that, in your opinion, the cost of construction is about 50 per cent more now than it was then, at least?

A. No, sir; I did not say that, that I know of.

Q. I have it marked here 50 per cent increase of cost.

A. That related to labor.

Q. You intended to testify that the cost of labor is 50 per cent more now than it was prior to 1896?

A. No, sir; I stated that for the period from 1896 to 1901, inclusive, as compared with the period of 1902 to 1907, inclusive, that I considered labor, considering both cost and efficiency, was 50 per cent more expensive now than then.

Q. So that, if you were to compute the cost of constructing the lines of the Great Northern at the cost of labor now, it would be away beyond and out of proportion to what they actually cost when they were constructed, would it not?

A. I think it would be higher; yes sir.

Q. Now, you have used that higher factor in all of your computations as to the cost of reproduction?

A. Yes, sir; I have used the prices prevailing in 1908, as far as possible.

Q. You spoke, in your testimony, about Mr. Morgan's investigations of the road as you had obtained it by inquiry of your employes?

A. Yes, sir.

Q. As a matter of fact, where it was necessary to make a profile estimate and you had furnished Mr. Morgan with the profile, you also furnished him, did you not, at his request, all information in your possession as to the dimensions of the grades, slopes and everything else pertaining to them?

A. I didn't know that was furnished. If it was, it was without my knowledge.

Q. Well, you don't want to say that it was not furnished?

A. No, sir; I do not.

Q. If it is true that he had all that information, obtained from your company, and made these investigations besides that you refer to it would be quite sufficient, would it not, to equip him to make an accurate profile estimate in cases where the records did not disclose the quantities?

A. I don't think he would be so well equipped as one who had knowledge of the conditions to be contended with on each line, so far as settlement was concerned.

Q. As a matter of fact, Mr. Morgan's measurements and personal examination were made for the purpose of checking the information obtained from your Company, and testing its correctness, was it not?

A. I can't say what his intention was, but I should judge that is true.

Q. And in many instances he was able to give you information which caused you to change your records, in some instances, anyway, so as to conform to the facts?

A. Do you refer now to his trip over the road?

Q. I refer to his entire investigation of the Great Northern System in this state.

A. O, yes, I think that is true, that his work and ours, covering this whole matter, has revealed a good many things that we didn't have of record.

Q. In other words, that he got to you, by his investigation, information which you didn't have before, yourself with reference to the road?

A. I don't think that is quite true. We had it, but probably overlooked it in getting the facts together.

Q. But in cases where he called your attention to the discrepancies between what he had found and what your records showed, you usually found that he was correct, didn't you?

A. Yes, I guess that is right.

Q. So that he showed very careful work?

A. I think that is right, except in the bridges. I can't understand why he didn't put in the number of bridges which he noted and we noted on the inspection trip.

Q. There were thirteen bridges, and I am glad you referred to that because I forgot to ask you about it. There were thirteen bridges omitted in Mr. Morgan's estimate; those were bridges which were not entered in your report to him of the bridges on your road, were they not?

A. That is true; I testified to that.

Q. And notations were made by your engineer accompanying Mr. Morgan, and by Mr. Morgan; as they went over the road they found these bridges; your engineer reported the fact to you, did he not?

A. Yes, sir.

Q. Did he tell you that he had agreed to furnish Mr. Morgan with specifications for those bridges from which he could figure the quantities and value of material contained in them?

A. No, sir; he did not. In fact, I didn't understand it that way. I did take up with Mr. Morgan, by letter, the question of what additional information he wanted, to cover everything to bring his valuation up to whatever date he proposed to bring it up to, and he told me he didn't want the matter handled that way, he would call on me for whatever information he wanted.

Q. Mr. Morgan has gone away, but his minutes show that these thirteen bridges were noted and that the specifications were to be furnished to him to make computations of them; the records do not show that the specifications were ever fur-

nished, and that undoubtedly accounts for the bridges having been overlooked?

A. It may be.

Q. You never did furnish Mr. Morgan with any specifications of those thirteen bridges?

A. Not that I know of.

Q. All the bridge-work specifications furnished were included in his estimate, were they not? in addition to that, the bridges of Minneapolis which you mentioned, were also included in your estimate?

A. I think that is right.

The MASTER: Do I understand you to say that these thirteen bridges were bridges that you had omitted and that he found and reported to you, but didn't include, because, as was suggested here, he wasn't furnished with the specifications?

WITNESS: Why, that is the statement of Mr. Young.

The MASTER: Did he find these bridges himself and report them to you, in addition to what you yourself had reported? Is that the way it is.

WITNESS: They were found during the inspection trip as they went over the road. Both our own engineers and Mr. Morgan having these sheets before them containing our report, found these bridges, and they both made notes of them; then after the inspection was completed it was our expectation that we would be called upon for report bringing the total valuation up to a later date, as we understood Mr. Morgan was planning to bring it to a later date than June 30, 1906, and we wrote Mr. Morgan asking him if he wanted additional sheets bringing the valuation up to a later date, and he replied by saying that he didn't care for it that way but would call upon us for whatever detailed information he wanted to bring it up to whatever date he concluded to bring it to.

Q. But these thirteen bridges were overlooked in the final reports made by you to him; that is he never asked you for the

specifications that you can remember, and they were not furnished to him by you?

A. No, sir; we didn't furnish the specifications.

Q. These bridges would not have been included in any specifications for work done after 1906; these bridges were all there prior to 1906?

A. Yes, sir; they were all there prior to June 30, 1906. You understand I don't claim that it is anything more than an oversight; it simply shows a little carelessness.

Q. When you furnished him your report of what you claimed to be the different quantities and different structures connected with your line, you did report all other bridges and gave specifications of them except these thirteen?

A. Yes, sir.

Q. And all that you furnished were included in his estimate?

A. Yes, sir.

Q. Well, now, if you will furnish us the specification of those thirteen bridges that were omitted, we would be glad to have Mr. Jurgensen make the computation and add it to Mr. Morgan's estimate, if you will. It was clearly, it seems to me, an omission, and I think an excusable one under the circumstances, because those seem to be the circumstances. The total value of those thirteen bridges was,—do you remember it?

A. No, but I have it here.

Q. Personally I would be disposed to take your estimate of it without further inquiry, but if you will furnish the specifications we will make an estimate.

A. All right.

Mr. HOW: Just have Mr. Jurgensen submit a statement based upon it. We don't, of course, care to have Mr. Jurgensen qualify as an expert.

Attorney General YOUNG: Well, he is an expert.

Mr. HOW: I know it; I say we don't care to put him to that trouble. I know he is an expert.

Q. In speaking about the testimony given in the Steenerson case, which was referred to this morning, did you intend to indicate, by your recent statement on re-direct examination as to the lack of means of knowledge of railroad contractors as to the real cost of track-laying and surfacing and things of that kind, that the exhibits used in the Steenerson case were probably incorrect, or were you reflecting on the accuracy of those exhibits?

A. I was simply making a general statement about contractors as a rule not having knowledge as to the expenses which would be incurred by a railway company.

Q. What particular phase of the case did that have application to?

Mr. HOW: Well, that is objected to as a matter of argument. That testimony speaks for itself.

The MASTER: Well, he wants to find out why he testified—what he had in mind.

Q. What did you mean by that? Was that intended to impeach the tables used in the Steenerson case?

Mr. HOW: That is objected to as impertinent and improper cross-examination.

The MASTER: Objection noted. You may answer.

A. I feel very sure that there is not enough in there for track-laying and surfacing.

Q. The exhibits taken from the Steenerson case which were read into the record this morning were offered on behalf of your Company by Mr. Grover, who was then its general counsel, in the trial of that case as exhibits offered on behalf of the Company, for the purpose of showing what they purport to show, the cost of reproducing the road, were they not?

A. I presume that is right.

Q. And they undoubtedly had been prepared, had they not, with that degree of care that Mr. Grover, who was a very capable and painstaking man, deemed necessary to show the truth?

A. Well, that would only be a supposition on my part.

Q. Well, you don't care to impeach the ability of Mr. Grover to try cases for the Great Northern Company, do you?

A. Not at all.

Q. There is $700,000 included in Ex. G for transportation of men and materials used in construction of the lines referred to in that exhibit, and I believe you testified that you didn't think that was sufficient to cover the whole cost of transportation?

A. Yes, sir; I did.

Q. The Company which you represented then and which you represent now probably had as accurate means of getting correct information at that time as to an item of that kind as they have now, hadn't they?

A. Oh, I think very likely.

Q. As a matter of fact, it is customary now to value railroads a good deal higher than they were valued in those days, isn't it?

A. It is necessary to do so.

Q. It seems to be, even with the same lines of road.

A. The improvements which have been made in every way make that necessary.

Q. And the unit prices which were used then have been, in many cases, doubled, both as to labor and materials, in your estimates, have they not?

A. No, sir; I don't think that is true.

Q. Well, take the item of track-laying and surfacing, which was put in in one of those estimates at $375, and in another one at $400, you have put in at $835?

A. Yes, sir; I claim that the item of train service and Company expenses is not included there.

Q. What expense per mile is involved in the transportation of material employed in the single work of track-laying and surfacing?

A. The best answer to that is to study Ex. 7, which gives the experience obtained from track-laying and surfacing 1565 miles of railroad.

Q. That is 1565 miles not in Minnesota but all over your vast System?

A. Built since 1898.

Mr. HOW: All you have built since 1898?

WITNESS: Yes, sir.

Q. The item of cost of transportation, in some of those lines, covers the cost of transportation over thousands of miles of distance, doesn't it, of the men and materials?

A. It covers the transportation for whatever distance would be required to where the work was done.

Q. From your headquarters at St. Paul?

A. You will notice that under transportation per mile the average is $19.

Q. $19 per mile?

A. Yes, sir; that covers all the lines in the exhibit.

Q. That would not be sufficient to account for a difference of $400 per mile, the difference between the estimate in the Steenerson case and your estimate in this case, would it?

A. No, sir; but you have the item of train service yet to take care of.

By Mr. DURMENT:

Q. I wanted to ask just a question or two. I wish you would explain a little more clearly just what you mean when you say that considering the increased cost of labor and efficiency, the increased cost of doing the work is about 50 per cent.

A. The best I can do with that is to say one dollar's worth of labor in the period referred to, from 1896 to 1901, would require an expenditure of one dollar and fifty cents at the present time or for the period from 1902 to 1907.

Q. Now, then, what has efficiency to do with that? That would be the difference in cost of labor simply?

A. No, sir; not at all. I had in mind both what you pay for the labor and what the accomplishment was.

Q. If I understand you, then, to do the same amount of work for which you paid a dollar prior to 1901, you would have to pay $1.50 since that time?

A. Yes, sir; that is roughly my idea.

Q. You would get the same work as a result, the same quantity and same quality as a result, but before that time you paid a dollar for it and after that time you paid a dollar and a half; is that right?

A. Well, that is roughly my idea. You can't make any fine line of demarkation between the two, but taking the period as a whole, between 1896 and 1901 and the period as a whole from 1902 to 1907, the work which cost you one dollar in the first period would probably cost you about a dollar and a half in the second period; that is, for labor.

Q. And that is due to the increased price of labor, what the laborer's time would cost, a dollar before 1901 and a dollar and a half since?

A. It is due to both, the increase in what you have to pay the laborer per day and the smaller amount of work which he would accomplish.

Q. Then how much has been the difference, roughly, in the price you would have to pay the laborer before 1901 and the price you would have to pay him after 1901, per day, leaving out the question of the amount of work done?

A. Oh, I wouldn't like to go into details on that. I have given you a general statement that I consider the cost of doing work by ordinary labor as of the two periods is in about that proportion.

Q. Well, I want an answer to this question: You say you include both; now, then, I say how much more has it cost per day for laborers (that is, each laborer,) to do this work since 1901 than it cost before 1901, leaving out the question of effi-

ciency, the amount of work accomplished?

A. Oh, if you want me to give a rough statement, you can charge half of it to labor and half of it to efficiency, but that is simply a rough statement. To get anything accurate in that you would have to compare year by year, and I am simply giving you a very general statement.

Q. I understand that. Then, if I understand you rightly, roughly speaking, labor which before 1901 would cost a dollar per day would cost a dollar and a quarter per day after that?

A. That would be somewheres near the case; yes, sir.

Q. And, roughly speaking, then, it would follow from what you have said, that each laborer per day since 1901, would do approximately or roughly speaking, 25 per cent less work than a laborer would do in a day before 1901?

A. Yes, sir; that is somewheres near the idea.

Q. Then there has been no increase in the efficiency with which work has been done since 1901?

A. I don't understand that question.

Q. Well, that is, there has been no improvement in the doing of railroad work since the year 1901; that is, you can't do, with the same amount of labor and in the same time, any greater amount of work since 1901 than you could before but rather less?

A. Taking the two periods together, that is true. I am not comparing year by year. I took the two periods from 1896 to 1901 and then from 1902 to 1907 and compared them that way. You can't pick out individual years and make comparison, but, roughly speaking, the two periods bear in my mind about that relation.

Q. Well, what I was getting at, Mr. Hogeland, was this: I had understood generally that, year by year, for the last generation, in railroad building as everything else, the new machinery, the new methods, the increased facilities of doing work, had resulted in doing a greater amount of work in the

same time with practically the same men and same forces as years before. Now on your testimony here, it appears, if I understand it correctly, that the contrary has been true in railroad building; that, taking the period from 1901 down to the present time, the railroads have not been able to do as much work with the same force of men as they did before, but have decreased about 25 per cent. Is that true?

A. That is true. The question of machinery doesn't come into it except in this way; that, by the use of machinery, you are able to get along with less men. That has been a matter of necessity, to use machinery to a certain extent in the place of men, but when it comes to a labor proposition, there is no question in the world but what the labor today is very much less efficient than it was ten years ago.

Q. That is, the mere manual labor, the picking and shoveling?

A. I am talking about what we call laborers on railroad work. That would not cover men like masons and carpenters and bricklayers.

Q. Well, what does it cover?

A. Laborers.

Q. Well, what do you mean by laborer what kind of work does he do?

A. Ordinary laborer's work. He may shovel, he may hold a plow, he may drive a team, he may work around a steam-shovel. I think we all know pretty well what an ordinary laborer is.

Q. But has there been no decrease in the number of men employed to do the work of the road, an equivalent amount of work of the road, since 1901?

A. Do you mean taking the use of machinery into question?

Q. Yes.

A. I think you can say that has been the only object accomplished by machinery, that is, to enable work to be done with a

less number of laborers, and that was a matter of necessity.

Q. Then, while the price of labor has increased from 1901 down, and the amount of labor per man done in a day has decreased since 1901 from what it was before, yet on the whole the railroads have employed fewer laborers to accomplish the same amount of work, haven't they, but employed more of different machinery?

A. For certain classes of work that is true. It would not be true of ballasting; it would be true of certain classes of grading; it would be true to a certain extent, of track-laying.

Q. And, of course, it is true that the railroads could use this machinery to advantage, so that, on the whole, the work would be done more cheaply without it or they would not have used it?

A. Not necessarily; that doesn't follow. In some instances it has reduced the cost of work, but primarily it was brought about because of its being almost impossible to secure the labor.

Q. But you don't get any more road nor any better road as the result of this work than you did before 1901?

A. No, I don't think you get any more or any better.

Q. Take the case of letting a contract to do a certain amount of grading in 1896 at a price of 20 cents a yard, say; if you were to let that contract for the same work in 1901 or 1902, what would be the contract price, do you think?

A. I couldn't tell you that. I would have to go into that. If you will take the period the way I have designated it, I will—

Q. Well, then, I will say between 1901 and 1908.

A. I put it in my testimony to Mr. How that I thought about 25 per cent.

Q. About 25 cents?

A. About 20 per cent. the increase would be, at the present time; that is, work which cost in the first period—or could be let, rather, in the first period, for 15 cents a yard, would prob-

ably cost about 18 cents a yard in the later period.

Q. And if it could be let for 20 cents in the first period, it would be let for about what in the later period?

A. About 24 cents.

Q. I began asking these questions because I thought you meant this: that, taking a piece of road built in 1896 to 1901, it would cost, say $20,000 a mile, for example, to build that road, that in the later period if you would build another mile of road it would cost you $30,000 to build it probably, but that the quality and character of the later mile built was superior to the quality or character of the earlier mile; so that, while it cost you 50 per cent more to produce a mile of railroad in the later period, you had a railroad that was very considerably better or more valuable for railroad purposes. There was nothing of that idea in your mind, was there?

A. No, sir; not in giving my testimony as to the cost and efficiency of labor.

Q. Well, that is what led me into this matter. I didn't quite understand.

Adjourned until Friday, September 24, at 10 a. m.

Federal Building, St. Paul, Minn., Friday, September 24, 1909, the hearing was resumed at 2 o'clock P. M.

F. H. PARKER,

recalled on behalf of Complainant, testified:

By Mr. BUTLER:

Q. You are the same Mr. Parker who heretofore was sworn and testified in this case?

A. Yes, sir.

Q. The auditor of freight receipts of the Great Northern Railway Company, I believe?

A. Yes, sir.

Q. (Complainant's Ex. 57 shown to witness.) Mr. Parker, this exhibit purports to contain four way-bills in April, 1908, all from Minnesota Transfer to Argyle, Ogilvie, Greenbush and Monticello, respectively. Are these copies of actual way-bills on which business moved?

A. They are.

Q. From these way-bills can you tell the point of origination of each shipment?

A. Yes, sir.

Q. And the way-bill marked No. 3246 originated where?

A. Originated at Midway, near the Transfer, the Minnesota Chair Company shippers.

Q. And went to Argyle?

A. Yes, sir.

Q. And No. 13081 originated where?

A. At Minneapolis.

Q. And went to Ogilvie?

A. Yes, sir.

Q. And 13113 originated where?

A. At Sixteenth street, Chicago.

Q. Came to you at the Minnesota Transfer and went to Greenbush on your line?

A. Yes, sir.

Q. And the remaining one No. 13,213, originated where?

A. Sixteenth street, Chicago.

Q. Came to you at Minnesota Transfer and went on your line to Monticello?

A. Yes, sir.

Mr. BUTLER: The exhibit (57-Parker) is offered in evidence.

Q. Mr. Parker, I call your attention to the Great Northern Railway Company station agent's abstract of freight received marked Ex. 58-Parker, and ask you if that paper is a copy of what it purports to be a copy of.

A. Yes, sir.

Q. To-wit, station agent's abstract for the month of April, 1908, from Hamline Transfer, St. Paul, South St. Paul, Minneapolis to Menahga.

A. Yes, sir.

Q. And Menahga is a point in Minnesota?

A. Yes, sir.

Q. And this abstract shows the shipments from the points in this vicinity that I have just named to that station?

A. It does.

Q. Except in instances where shipments move by carload lot, it doesn't show the kind of stuff or commodity moved or class of freight?

A. It does not.

Q. Neither does it show the point of origination of the stuff?

A. Not necessarily; it may show the point of origin.

Q. Yes but it does not show whether or not the shipments mentioned on here originated at Hamline, St. Paul, South St. Paul, or Minneapolis, or whether they originated elsewhere and came to your road at these junction points?

A. It does not show that information.

Q. And from this abstract, then, it cannot be ascertained whether the shipments indicated on it were in fact intrastate

business or what we called local-interstate when you were on the stand the first time ?

A. It could not be ascertained from the abstract.

Mr. BUTLER: It is offered in evidence (Complainant's Ex. 58-Parker.)

Q. I call your attention to another exhibit marked "Complainants' Ex. 59-Parker," under caption Great Northern Railway Company, Statement Showing Number of Tons Commercial Freight, Both Intra and Inter, Handled in Minnesota, Year Ending June 30, 1908. This statement was prepared under your direction?

A. Yes, sir; that is part of our regular monthly statistical information.

Q. And it shows the number of tons of freight moved in Minnesota on the line of the Great Northern by months, for the year specified in the caption?

A. Yes, sir.

Q. And it shows tons of commercial freight—by that is meant the same as revenue freight?

A. Yes, sir.

Q. Freight other than the freight of the Company?

A. Exactly.

Mr. BUTLER: It is offered in evidence, (Complainant's Ex. 59-Parker.)

Q. Paper marked Ex. 60-Parker, under caption of "Great Northern Railway, Statement showing freight business local to state of Minnesota, 'old basis,' year ending June 30, 1908,"—by "old basis" you mean as stated in the note below, do you?

A. Yes, sir.

Q. You mean that this statement includes all freight business handled by the Great Northern Railway Company locally in Minnesota, regardless of the fact that some of it may have originated or terminated at points on foreign lines in other states?

A. Yes, sir.

Q. That includes the so-called error so often referred to?

A. It does.

Q. That ran through all the statistics prior to the year just ended?

A. It does.

Q. And it shows does it, by months, the number of tons carried, the number of tons per one mile—or the number of ton miles is the same thing, as I understand it,—

A. Yes.

Q. —the amount of revenue received, the length of haul in miles, the revenue per ton received and the revenue per ton per one mile received?

A. Yes, sir.

Q. And this is taken from the books regularly kept by the Company during the period covered by this exhibit?

A. From our monthly statistical record; yes, sir.

Q. And to further illustrate it, we will look at the first line which means that in the month of July, 1907, this Company in Minnesota carried 261 398 tons and made 29,671,859 ton miles and received therefor $301,734.34; that the average length of haul was 113½ miles, that it received per ton of freight carried $1.154 that it received per ton per mile one cent and seventeen one-thousandths of a cent or 10.17 mills?

A. Yes; it shows all this information in connection with business handled by the Great Northern locally in Minnesota.

Q. It does not include all of the tonnage on the rails in the state?

A. No, sir; not the Minnesota proportion of what we term the strictly interstate business.

Mr. DURMENT: The decimal point controls and not the word "mills" above, in reading that, I suppose.

Mr. BUTLER: You see it is one cent there under the cents column, and then under the mills the decimal point indicates.

That is a little bit misleading.

Mr. DURMENT: I was reading it as being controlled by the word "mills" in the column above.

WITNESS: It would be more proper to have a coma there instead of a decimal.

Mr. BUTLER: The exhibit is offered in evidence, (Complainants' Ex. 60-Parker.)

Q. (Paper marked Ex. 61-Parker shown to witness.) The caption of this statement is "Great Northern Railway Company, statement showing freight business local to State of Minnesota, 'old basis' year ending June 30, 1909." By the "old basis" I understand is meant that this statement includes all freight business handled by the Great Northern Railway locally in Minnesota, regardless of the fact that some of it may have originated or terminated at points on foreign lines in other states; am I right?

A. Yes, sir.

Q. And this statement shows, by months, the number of tons of such freight carried, the number of tons per one mile, the revenue, the length of haul revenue per ton and revenue per ton mile?

A. It does.

Q. For example, the first line shows that in July, 1908, there were 120,586 tons of such freight carried by the Great Northern in Minnesota, and that there were thereby produced 16,419,309 ton miles, for a revenue of $235,905.10; that the average length of haul was 136.2 miles; that the revenue per ton of freight moved was $1.956, and that the revenue per ton per mile was one cent and .437 of a cent, or 14.37 mills per ton per mile?

A. Yes, sir.

Mr. BUTLER: The exhibit is offered in evidence, (Complainants' Ex. 61-Parker.)

Q. Paper marked Ex. 62-Parker, under caption "Great

Northern Railway Company, statement showing intra freight business in the state of Minnesota, year ending June 30, 1909." As I understand it, from the note at the bottom, this statement includes intra freight business only; that is, business handled wholly within the state of Minnesota, regardless of the fact that two or more carriers may have been interested in the haul.

A. Yes, sir; that is correct.

Q. That is, it is strictly intrastate business in Minnesota, in the haul of which the Great Northern road participated as the sole carrier or as one of the connecting carriers?

A. Yes, sir.

Q. Now, this is for the year ending June 30, 1909, and does not include the error that was referred to so often in this intrastate freight business?

A. It does not include the error.

Q. During the year ended June 30, 1909, the true intrastate business was separately kept?

A. It was separately kept each month.

Q. And this statement is a transcript of the books in that regard which were kept as the business was done?

A. It is.

Q. Now, to further illustrate it, the first entry shows, as I understand it, that in Minnesota in the month of July, 1908, of strictly intrastate business, the Great Northern Railway Company moved 98,402 tons, and that there was produced 11,208,079 ton miles in such movement and the revenue earned thereon was $173,394.94; that the average length of haul was 113.9 miles; that the revenue per ton was $1.762, and that the revenue per ton per mile was 1.547 cents, or 15.47 mills; am I right about that?

A. Yes, sir.

Q. Ex. 63-Parker shown to witness, being a statement under caption "Great Northern Railway Company, statement showing local interstate business in Minnesota, year ending

June 30, 1909." Mr. Parker, I infer from the note at the bottom that this statement includes freight business handled wholly within the state of Minnesota by the Great Northern Railway but which originated or terminated at points on foreign lines in other states; am I right about that?

A. That is correct.

Q. In other words, this shows what we have heretofore called the local interstate business and the amount of error which would have been included in 1909 business if it had been kept as the prior years were in fact kept?

A. Yes, sir.

Q. And it shows, by months, the tons carried, the ton miles, the revenue the length of haul, the revenue per ton, and the revenue per ton mile?

A. It does.

Mr. BUTLER: It is offered in evidence, (Complainant's Ex. 63-Parker.)

Q. Ex. 64-Parker, a statement showing freight business in Minnesota, fiscal years ending June 30, 1909, and 1908. This is a statement prepared under your direction, Mr. Parker?

A. Yes, sir.

Q. And is for the purpose of showing a comparison of tons carried, ton miles revenue, length of haul, revenue per ton and revenue per ton mile, 1909 with 1908, showing separately intrastate business, local interstate business, total local and local interstate or the local on the old basis interstate, and, finally, total all freight business in Minnesota?

A. Yes, sir.

Q. To illustrate: the first two lines of this statement show that of strictly intrastate business there were, in 1909, 1,389,196 tons moved; in 1908 there were 1,511,487 tons moved, and that in 1909 the ton miles on such movement was 152,893,613, while in 1908 it was 171,317,766 ton miles; that the revenue in 1909 was $2,338 260.17; in 1908 it was $2,366,359.02; that the

length of haul in 1909 was 110.1 miles; in 1908 was 113.3 miles; that the revenue per ton in 1909 was $1.683, and in 1908 was $1.566; that the revenue per ton per mile in 1909 was 15.29 mills, and in 1908 was 13.81 mills. Am I right?

A. You are.

Q. And similar information as respects the other classes of business, mentioned in the first column?

A. Yes, sir.

Mr. BUTLER: Ex. 64-Parker is offered in evidence.

Q. When you were upon the witness-stand before, your attention was called to the paper in evidence here which is marked Ex. 53-Ward, and my recollection is that at that time you stated the figures thereon, and especially the amount of money allotted, on page 3 thereof, stated against the item "Revenue allotted to Minnesota $2,366,359.02," was computed by you for that exhibit?

A. Yes, sir.

Q. Reference was made to this item in the testimony offered in behalf of the defense through the witness Mr. Hillman, and my recollection is his allotment of revenue to Minnesota was somewhat larger than that amount—about $400 000, if my memory is right.

A. Yes, sir.

Q. Have you seen the testimony of Mr. Hillman in that respect?

A. I have.

Q. And since then have you again considered the data by which you established the figure given in Ex. 53-Ward?

A. I have.

Q. Are you still of opinion that it is correct as you stated when you first testified?

A. I am.

Q. The figure to which I have referred, from the exhibit 53-Ward, is the revenue derived from the strictly intrastate

business for the year ending June 30, 1908, as established by you in the method quite fully explained by you when you were on the stand before.

A. Yes, sir; that is the strictly intrastate business in Minnesota.

Q. On all divisions of the road?

A. Yes, sir.

Q. In Minnesota?

A. Yes, sir.

CROSS-EXAMINATION.

By Attorney General YOUNG:

Q. Mr. Parker, in the two examples of way-bills which you have included in your Ex. 57, which cover interstate business received by your Company at the Minnesota Transfer and delivered by it to points within the state, do these shipments represent interstate way-billing or local way-billing within this state?

A. They are billed locally.

Q. Billed locally by the Company?

A. By the Great Northern. However, the movement is interstate, figuring from point of origin to final destination.

Q. But they are way-billed locally by your Company from Minnesota Transfer?

A. Yes, sir.

Q. Where interstate traffic is received by your Company at Minnesota Transfer and rebilled, it is forwarded at local rates, isn't it, Minnesota rates?

A. In a great many cases.

Q. That is the practice, isn't it?

A. Not necessarily. I would say in the majority of cases; however, there might be some through rates where we would not receive our local; they would be very few.

Q. Very few where you would not receive your local?

A. Yes.

Q. Well, that would not be true of freight received at the Transfer and forwarded on the through way-bill; you would get a proportion of the through rate in that case, would you not?

A. We receive our local rate in a great many shipments handled from the Transfer on interline way-bills.

Q. And you have not undertaken to show just what proportion of that kind of business you get local rates on and what proportion you get a proportion of the through rate on?

A. No, I have not.

Q. On the two way-bills which you have used as examples here the local rate is charged?

A. It is.

Q. And I understood you to testify that, as a rule, the Great Northern gets local rates on interstate business received by it at the Transfer and that it is the exception where it does not?

A. Well, I understood you to mean interstate business terminating on our line in Minnesota.

Q. Yes, that is what I do mean.

A. It is the exception when we do not.

Q. You said you had read Mr. Hillman's testimony?

A. I have read a portion of his testimony.

Q. You know, do you not, that Mr. Hillman excerpted from his data with reference to the Minnesota business all interstate business received by your Company and limited his computations to strictly intrastate business?

A. I don't know that he did that. His exhibits appear to cover intrastate business only.

Q. They purport to cover intrastate business only?

A. Yes, I don't know what he compiled.

Q. These exhibits, then are not intended to throw any light on Mr. Hillman's testimony, because they don't appear to apply to the same thing?

Mr. BUTLER: Oh, no, that wasn't my intention; they were just illustrative of the forms in common use, that is all.

Q. On Ex. 64 you give us what purports to be a statement showing the freight business in Minnesota for fiscal years ending June 30, 1909 and 1908. In line 1 on that exhibit, you give what purports to be the strictly intrastate business for 1909 and in line 2 the intrastate business for 1908; in connection with line 1 you give us the monthly details for 1909 of the strictly intrastate business but you do not give us that information as to the strictly intrastate business for 1908; can you furnish us that information for 1908?

A. No, sir.

Q. Corresponding to Ex. 62, I believe, and Ex. 63. Why can't you?

A. As we have stated, a number of times, the business was not compiled on that basis prior to the year ending June 30, 1909. What I mean is it was not compiled on that basis regularly each month.

Q. If you furnish those statements it would afford an opportunity to compare that information with Mr. Hillman's testimony, would it not?

A. I don't know that it would.

Q. So far as any difference in income is concerned, as shown on Ex. 64 it arises from fluctuation in the amount of the traffic and not from any difference in rates; there were no changes in rates between 1908 and 1909?

A. No material changes; there were undoubtedly some slight ones.

Q. I mean there was no change in prescribed rates by the State during the years 1908 and 1909.

A. Not to my knowledge. I presume there were some little ones, but none affecting this case, as I understand it.

Q. And none affecting the income of the Company?

A. Why, we receive various orders from the Railway Commission every year, you know, in small cases.

Q. Well, you haven't received any rate orders from the

Railway and Warehouse Commission since the commencement of this suit, have you?

A. Not to my knowledge.

Q. Your statistical information given per month for the year 1908 shows a diminution in the business as to the tons carried within the state, which seems to have been graded down, from the beginning of the year, practically to the end of it; I guess October was the largest month. That was on account of the so-called "panic," I presume, that we experienced during the fall of 1907, wasn't it?

A. Yes, I suppose that was true.

Q. And your Ex. 61 giving the volume of business for the months of the fiscal year ending June 30, 1909, shows the reverse condition, and greatly increased per month,—a tendency towards an increase per month, does it not?

A. I don't think so; it is heavy during the fall of 1908. It is lighter—

Q. Well, the months that are included in the fiscal year of 1909 show a heavier volume of business than the same months in 1908, do they not?

Mr. BUTLER: You haven't the same months of 1908, General, have you?

Attorney General YOUNG: Well, you have as to the old basis.

WITNESS: Well, you could very easily compute how the average would be, taking the first six months and the last six months. There doesn't seem to be any great difference.

Q. Yes, there is quite a perceptible difference, quite a perceptible increase in the tonnage. I am comparing month with month. Take the months of 1909 compared with the same months in 1908.

A. Yes, there is quite an increase in 1909 over 1908 for the same months; that is, for the last half of the year.

Q. Have you the monthly information for the months suc-

ceeding June of this year, that is, for July and August?

A. It is not yet compiled; that is, it is not finished.

Q. Have you gone far enough so that you could state whether it shows a still greater increase over the corresponding months last year?

A. That could be compiled and will be, in time, but we have just gotten out our annual report and that part of the work is naturally somewhat behind.

Q. I wish, at your convenience, then, within a few days, you would furnish us that if you will.

A. I will see how far that is along; I don't really know now. That would be for July and August?

Q. Yes.

A. That would be local intrastate?

Q. Yes; that is, showing local intra and inter; take the old basis, for instance, and also separately, if you can.

By Mr. DURMENT:

Q. Just one or two questions that I don't get quite clear in my mind. On your Ex. 60, showing freight business local to the state of Minnesota, on the old basis for the year ending June 30, 1908, you have a foot-note explaining that that includes all freight business handled by the Great Northern locally in Minnesota regardless of the fact that some of it may have originated or terminated at points on foreign lines in other states. Now, I understand that that includes what on some of your other exhibits you have designated "local interstate" or interstate local?

A. It does include what we term local interstate.

Q. Now, will you tell me what you mean by business handled locally although it originates or terminates in another state than Minnesota?

A. Why, I mean that business handled by the Great Northern Railway between points in Minnesota without passing out of the state en route on our own line but which originates or

terminates at a point on a foreign line in some other state.

Q. As I understand it, then, there is no distinction made in the method of handling, but the difference between that and intrastate business simply is in the point of origin and destination and, perhaps, in the rate?

A. That is, you mean there is no difference in the physical handling?

Q. Yes, ordinarily.

A. No, not necessarily.

Q. So far as your road is concerned and its treatment of it, I mean just the mere taking it on and transporting it and delivering it and that sort of thing, it is handled in the same way and together with intra business?

A. Yes.

Q. And it may originate in another state, may be destined to another state, and you may get a different rate for handling it; is that right?

A. Yes.

The MASTER: That local interstate, however, would not apply to freight which originated in another state and was destined to another state and passed through Minnesota?

WITNESS: It might, your Honor, if we handled it locally in Minnesota without taking it out of the state; say a shipment from Chicago to Winnipeg, we would handle it from Minnesota Transfer to Noyes; both points are in Minnesota, and it would not pass out of the state while on our tracks, but it would originate in Illinois, on say the C. M. & St. P. R'y., and terminate in Manitoba on the Canadian Northern.

Mr. BUTLER: The Canadian Northern would get it at Noyes in Minnesota?

WITNESS: Yes.

Q. That is, you might receive it in Minnesota from a connecting line, haul it a distance in Minnesota, and yet in Min-

nesota deliver it to another connecting line that would carry it beyond the state?

A. Yes, sir.

Q. That would be included in what you call local interstate?

A. Yes, sir. On the other hand, if we hauled the freight between two stations on our line in different states, say, Minnesota Transfer, Minnesota, to Grand Forks, North Dakota, we would call it interstate and have always so called it.

Q. Now, on this Ex. 60 and other exhibits, when you refer to freight business local to the state or handled locally, you include not only what you have described as local interstate, but all strictly intrastate business, do you not?

A. Exhibits 60 and 61 (the former for the year ending June 30, 1908, the latter for the year ending June 30, 1909) include the local interstate in Minnesota, together with the strictly intrastate.

Q. Well, in those exhibits, strictly intrastate freight which you have termed handled locally, is included, is it not?

A. It is included. The strictly intrastate is freight which was handled wholly within Minnesota without passing out of the state en route, regardless of the fact that two or more carriers may have been interested.

Q. But what I am getting at is this: that where you speak of local freight or freight handled locally in any of these exhibits and give your figures for that, it includes all intrastate freight?

A. Yes, sir.

Q. And in two of the exhibits it includes what you term local interstate?

A. Yes, sir.

Q. And in two others it does not include local interstate?

A. Ex. 62 is the strictly intrastate freight; Ex. 63 is the local interstate freight and does not include the strictly intrastate freight.

Q. And the other two do include it, as you have testified?

A. Yes, sir.

The MASTER: All freight, say originating in Chicago destined to Winnipeg and consigned by your line, would be what you call local interstate,—all freight?

A. Yes, sir.

The MASTER: It would not pass through, but because you took it in on your line at the Transfer and transferred it to another line in the state of Minnesota, any freight of that kind, wherever it originates or to what point it is destined, you call it state freight?

WITNESS: We formerly called it state freight.

The MASTER: Yes, you formerly called it state freight.

WITNESS: Yes, sir.

The MASTER: Now you designate it as local interstate?

WITNESS: We designate it local interstate, your Honor, as a matter of convenience. It is now considered by everybody, I believe, that that is interstate freight and we designate it local interstate so we can add it either way, for comparative purposes. Possibly in later years we may drop that term after there is no more comparing to do with the old basis.

Q. Now, from the information you have given us here as to the year 1909, if I remember it correctly, we would be able to make up a statement as to the freight business showing the number of tons inter and intra, the amount received (that is, the revenue) inter and intra for the year ending June 30, 1909?

A. That is shown on Ex. 64.

Q. Can you also give us the revenue for the year ending June 30, 1909, for passengers, divided inter and intra?

A. I presume the auditor of passenger receipts can.

Q. Could you get that for us, do you think, without much trouble?

A. I imagine so.

Q. Now, we have had made up, and are going to offer

shortly, some tables for the purpose of computations and comparison, where we have undertaken to set out for the years 1905 and 1906, 1906 and 1907, and 1908, the operating revenue, divided between passenger and freight and between inter and intra business, as shown on the reports made to the State Railway and Warehouse Commission; and also the operating expenses divided between freight and passenger; the operating expenses are taken from the reports to the State Railroad & Warehouse Commission, but the division between freight and passenger are the figures which are carried on the books of the Company; and also gross earnings from operation with the net after deducting the expense of operation, and the income, the debits and credits to the whole line which are not divided in the report to the State between state and interstate. Can you furnish the information for the year 1909? That is the easiest way of putting it.

Mr. BUTLER: We will get that for you as soon as it is available.

The MASTER: Then that will be a part of the testimony in the case, if you desire to offer it. Do I understand that as this case hereafter proceeds, at any time either party may make use of anything contained in these reports, as evidence or argument?

Mr. DURMENT: There is just one trouble about that, (that is, so broad as that,) if we ever get into an appellate court the exhibit will not be there and we shall not know where we stand.

Mr. BUTLER: Then let us consider the matter with respect to the annual report for 1909 disposed of as we have said, we may use the information contained in that.

The MASTER: Then my statement, if limited to the 1909 report, will stand?

Mr. BUTLER: Yes. Now with respect to their other report to the Commission, your Honor will remember that some of it has been offered in evidence. There are other matters in these

reports to which we desire to call attention, and I think I have already transcribed from these reports some such matter, though it is not all complete, and I will want to offer it in evidence if there be any doubt about my right to use it without its being formally offered.

Mr. DURMENT: Well, let me suggest this, then we can keep our record straight. You prepare that, call attention to it, have it in shape, we can consent that it be offered and received in evidence at the argument. Let us have it a little ahead, so that if we think there is anything that bears on it we can offer it also.

Col. CLOUGH: A certain number of days before the argument.

Mr. BUTLER: That was exactly my thought. If you want to use anything from these reports of the companies that have not been offered in evidence, if you will do the like for us, make a statement of what it is and let us have it, then we may formally offer it in evidence or consider it in evidence without formally offering and consent that the Master and the Court may use it as if in evidence.

Attorney General YOUNG: I think the fewer of those things we expect to refer to only incidentally the better, because the record is already lengthy.

Mr. BUTLER: Yes, I think so, too.

Mr. DURMENT: Well, that is all, then, Mr. Parker, with that understanding.

Mr. HOW: It is stipulated that any and all the evidence offered and received, or which may hereafter be offered and received, in either of the cases of Shepard v. Northern Pacific Railway Company and others, Kennedy v. Great Northern Railway Company and Dimock v. Great Northern Railway Company and others, Consolidated, and Shillaber v. The Minneapolis & St. Louis Railroad Company, insofar as the same, or any part thereof, may be applicable and material to the is-

sues of either suit may be read and considered in the determination of each other suit, to the same extent as if the same had been offered and received therein.

Mr. Durment introduced in evidence Defendants' Ex. I-Hillman, statement showing "Great Northern earnings as classified by G. N. Co. "A" Minnesota earnings from report to State, freight, passenger, miscellaneous, inter and intra. Also Defendants' Ex. J-Hillman, entitled "Willmar & Sioux Falls A-Minnesota earnings from report to State, freight, passenger, miscellaneous, inter and intra."

Adjourned.

Federal Building, St. Paul, Minn., Friday, October 29, 1909, at 10 o'clock A. M., the respective parties appeared before the Master upon application of the Solicitors for the State as set forth in the moving papers following, and after argument on behalf of the State by Messrs. Edward T. Young and Edmund S. Durment and on behalf of Complainant by Messrs. Jared How and Hale Holden, (pp. 1823-1881 Reporter's transcript) the Master made the order hereinafter set forth.

UNITED STATES CIRCUIT COURT,
DISTRICT OF MINNESOTA,
THIRD DIVISION.

BEFORE HON. CHARLES E. OTIS, MASTER IN CHANCERY.

JOHN S. KENNEDY

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (substituted for EDWARD T. YOUNG), IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, (substituted for W. E. YOUNG), WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNES and S. S. MCGLARUM.

TO MESSRS. HOW, BUTLER & MITCHELL,
Solicitors for Complainant,
and W. R. BEGG, Solicitor for said Railway Company:

GENTLEMEN: PLEASE TO TAKE NOTICE, that the above named George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, the officers of the state of Minnesota who are the active defendants in this action, through their solicitors and counsel in this action, claim the right to show as pertinent evidence bearing on the question of the value of the railroad of

said Defendant Company in the state of Minnesota, all the facts relating to its financial history and capitalization and the financial history and capitalization of its predecessors and any of its constituent subsidiary or proprietary companies that constructed any portion of its railroad in said state, together with evidence of the amount of money actually invested in said railroad in the state of Minnesota at the time of its construction, and the cost of any and all betterments, improvements or extensions thereof since construction, and claims that without such evidence the Master will not be in possession of the necessary information from which to find the value of said railroad in said state. That in procuring said information it will be necessary to have an examination made of the books, papers and vouchers of said Company, and of the Saint Paul, Minneapolis and Manitoba Railway Company. That for the reasons stated in the affidavit of Thomas Yapp hereto attached the Defendants who as aforesaid are making an active defense in this action have been unable and will be unable in the ordinary way to make the necessary examination of said books, records and vouchers of said railway companies to obtain said information and tabulate the same in proper form for introduction in this action as evidence:

YOU WILL THEREFORE PLEASE TO FURTHER TAKE NOTICE that on the 29th day of October, 1909, at ten o'clock in the forenoon, at the chambers of the United States District Court in the Federal Building in the city of Saint Paul in said state, the above named active Defendants, through their counsel and solicitors, will apply to the Honorable Charles E. Otis, the Master in Chancery before whom said action is pending, for an order requiring the said Railway Company and the said A. G. Drew as its comptroller in whose custody said records and papers now are, to have and produce before the said Master, at a time and place to be set by him the (1) distribution record of vouchers of the Saint Paul, Minneapolis and Manitoba Rail-

way Company, as well as the cash book and bill book of said last named Company, and (2) the general ledger journal and distribution record of vouchers of said Great Northern Railway Company, and also the cash book and bill book of said last named Company, and to permit the said Thomas Yapp and his associate expert accountants to examine the said books and records, and to take off from said books such information as may pertain to and disclose the matters referred to in the affidavit of said Yapp and this notice.

Dated October 27th, 1909.

(Signed) E. T. YOUNG,
GEO. T. SIMPSON,
EDMUND S. DURMENT.

Solicitors for said Defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles Elmquist.

UNITED STATES CIRCUIT COURT,
DISTRICT OF MINNESOTA,
THIRD DIVISION.

JOHN S. KENNEDY

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (substituted for EDWARD T. YOUNG), IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, (substituted for W. E. YOUNG), WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNES and S. S. MCGLARUM.

STATE OF MINNESOTA,
County of Ramsey. ss.

Thomas Yapp being first duly sworn, says that he is the assistant secretary of the Railroad and Warehouse Commission of the state of Minnesota. That this affiant and one C. W. Hillman, an expert accountant,—who has already testified in this case,—were several months ago employed by the officers of the state of Minnesota who are Defendants in the above entitled action, to prepare and tabulate information from the books of said Defendant Railway Company as to the cost to it of doing its intrastate business in Minnesota, which information was wanted for use as evidence in this case. That after the work above referred to was finished, affiant and said Hillman were employed by the same state officers to make an examination of the books of said Defendant Railway Company with reference to its capitalization and the relation between its capital and that of its subsidiary and proprietary companies by which a part of its railroad was constructed, so as to ascertain, tabulate and prepare for use as evidence in this action all the facts relating to the capitalization and financial history of said

Railway Company and the capitalization and financial history of the Saint Paul, Minneapolis and Manitoba Railway Company, the immediate predecessor in ownership of the railroad of said Railway Company, and to ascertain from said books, so far as the same is disclosed thereby, the actual original cost of said railroad and the cost of all betterments, extensions and improvements thereof since its construction in the state of Minnesota, as bearing on the value of said railroad in said state at the time the rates in controversy herein were prescribed, and at the present time. That all of the records and papers of said Saint Paul, Minneapolis and Manitoba Railway Company, as affiant is informed and believes, are in the custody and possession of said Defendant Railway Company, and so far as the same are here pertinent said books and records are, together with the pertinent books and papers of the said Defendant Railway Company, in the possession of A. G. Drew, the comptroller of said Defendant Company. That said Hillman and affiant have performed a part of the latter examination above referred to, and at the request of said Defendants above named who are officers of said state, said Defendant Railway Company and said Drew as its comptroller have permitted affiant and said Hillman to have access to and take off from the books and papers necessary to be examined the information of which they were in search. That in performance of said work for the purposes aforesaid affiant and said Hillman have examined with the consent of said Defendant Railway Company and said Drew the general ledger and journal of the said Saint Paul, Minneapolis and Manitoba Company. That in order to make such examination in such a way as to bring to the Master as evidence the information above referred to for use in this case it will be necessary for affiant and said Hillman to examine not only the books and papers above referred to, but also the general ledger, journal and distribution record of vouchers for said Defendant Railway Company, as

well as the cash book and bill book of said Company; and it will also be necessary in connection with the examination to have access to such supporting vouchers of the items in the distribution record as it may be necessary to examine, but which cannot be designated until the distribution record of vouchers of said Manitoba Company and said general ledger journal and distribution record of vouchers of said Defendant Company have been examined. That said Defendant Railway Company and said Drew as its comptroller have refused to permit affiant or said Hillman to have access to either the general ledger, journal or any other of the named records or papers of said Defendant Company, although the purpose for which said examination was proposed to be made was fully made known to them.

(Sgd.) THOS. YAPP.

Subscribed and sworn to before me this 29th day of October, 1909.

(Sgd.) C. F. McNALLY,
(Notarial Seal.) Notary Public,
Ramsey County, Minnesota.

My commission expires January 1st, 1915.

UNITED STATES CIRCUIT COURT,
DISTRICT OF MINNESOTA,
THIRD DIVISION.

BEFORE HON. CHARLES E. OTIS, SPECIAL MASTER IN CHANCERY.

JOHN S. KENNEDY

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (substituted for EDWARD T. YOUNG), IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, (substituted for W. E. YOUNG), WALTER SCOTT, H. P. WEBB, JOHN PALM, L. LARSON, TOM GUNNES and S. S. MCGLARUM.

In the Matter of the Application of George T. Simpson, Ira B. Mills, Charles F. Staples, and Charles E. Elmquist, who are respectively the Attorney General, and the members of the Railroad and Warehouse Commission of the State of Minnesota, for An Order requiring the Defendant the Great Northern Railway Company, and A. G. Drew as its comptroller to produce in court and permit an examination by said other Defendants of certain books and papers in the possession of said Railway Company said to contain certain information material to the defense in this action.

This matter came before me on the 29th day of October, 1909, at 10 o'clock A. M., upon the application of Defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist for an order requiring said Defendant the Great Northern Railway Company to produce in court and permit an examination by said other Defendants of certain books and papers described in the moving papers, which books and papers

are claimed to be in the possession and custody of A. G. Drew as comptroller of said Railway Company. Written notice of the application was given to the Complainant and to the Defendant Railway Company. Edward T. Young and Edmund S. Durment appeared on such motion as counsel for the applicants, and Messrs. How, Butler & Mitchell and Hale Holden appeared as counsel for the Complainant and for said Railway Company. The stated purpose of the said proposed examination of said books and papers was to ascertain all of the facts with reference to the capitalization of said Company, with a view to introducing the same in evidence in this case, and to ascertain, so far as the same can be learned from said books and papers of the Company, the actual cost of the railroad of said Company, and the amount expended upon it since construction, in betterments, improvements or extensions, as bearing on the question of the value of said railroad upon which said Railway Company is entitled to a reasonable return.

Counsel appearing in opposition to said application declared that they did not wish to contradict the statements contained in the affidavit of Thomas Yapp attached to the notice of motion. It was conceded that said Railway Company had refused to permit the accountants for the State to examine the books mentioned in the application, on the joint advice of its own counsel and counsel for the Complainant herein. It was further conceded by counsel that the Master, under equity rule No. 77, had the power to grant the motion, subject to review by the Court, if his discretion was abused.

It was urged in support of the motion that the issues raised by the pleadings, and the evidence already introduced by both parties in relation to the value of the railroad in Minnesota owned and operated by said Railway Company, made evidence as to the capitalization and the amount of money actually expended in its construction and in improvements and betterments, pertinent and necessary in order to determine the value

of the road and the basis for a reasonable income.

In opposing the application on behalf of the Complainant and the Railroad Company it was urged that the evidence sought to be obtained was neither relevant nor pertinent, and could not aid the Master in reaching a conclusion as to the value of the property. It was also claimed that the books were deficient, in reference to questions of original cost, and that such an examination of the books and papers as was proposed would greatly delay the conclusion of the case, and seriously interfere with the time and convenience of said Railway Company if they were required to search for and furnish vouchers relating to remote and antiquated transactions.

After hearing counsel fully on the matter, and it appearing that the information sought might be pertinent and might have some bearing on the ultimate question of the value of the railroad,

IT IS ORDERED, that said defendant The Great Northern Railway Company and A. G. Drew, its comptroller, have and produce before me forthwith at the room in the Federal building in the city of Saint Paul where the trial of this action has been conducted, the distribution records of vouchers of the St. Paul, Minneapolis and Manitoba Railroad Company and the cash books and bill books of said Company and that the said Company also produce the general ledgers, journals, cash books and bill books together with the distribution records of vouchers of said The Great Northern Railway Company, or in lieu of producing said books in court, that said defendants making said application be forthwith allowed to examine said books at the office of the said Great Northern Railway Company.

It is further ORDERED, that said defendants making this application be allowed in connection with the examination of said books to inspect such supporting vouchers of the entries appearing in such distribution records or journals as may be called for.

PROVIDED, that if any vouchers, books or other records are called for relating to transactions in cases where the production of the same will entail unusual inconvenience or hardship, or unusual loss of time on said Railway Company or the said Drew as such comptroller thereof, said Railway Company or the said Drew, without complying with such request may, on notice to said other Defendants, apply to the Master to be relieved from furnishing the same.

It is further ORDERED, that the examination of said books be carried on by said Defendants applying for this order with all due diligence, and with as little interference as possible with the business or convenience of said Railway Company.

Dated October 29th, 1909.

(Sgd.) CHAS. E. OTIS,
Special Master in Chancery.

Leave is granted to either party to take the question of the propriety of the foregoing order before the Circuit Court or one of the judges thereof, and to this end may submit to said Court a transcript made by Geo. N. Hillman, Official Reporter, of the proceedings had before the Master upon application to him for said order.

Oct. 29, 1909.

CHAS. E. OTIS,
Special Master in Chancery.

Federal Building, St. Paul, Minn., Friday, January 14, 1910, the hearing was resumed at 10 o'clock A. M.

CONWAY W. HILLMAN,

recalled on behalf of Defendants, testified:

By Attorney General YOUNG:

Q. Mr. Hillman, you are the expert accountant who testified heretofore in this case on another branch of it?

A. Yes, sir.

Q. You were directed, were you not, by the officers of the State who are Defendants in this case, to compile from the books of the Railway Company, that is, from the books of the Great Northern Railway Company and its predecessors and subsidiary companies, the information showing the cost of the road?

A. Yes, sir.

Q. When you undertook that work, Mr. Hillman, to whom did you apply for the books containing the information which you were seeking?

A. To Mr. Drew, the Comptroller of the Great Northern Railway.

Q. Mr. Drew is the officer of the Great Northern Railway having control and possession of the books of account, is he, pertaining to that branch of the subject?

A. I so understand it; yes, sir.

Q. Were you able to find, in the possession of Mr. Drew, or did you ask him, for any books relating to the roads that preceded the St. Paul, Minneapolis & Manitoba Company?

A. Yes, sir; I asked him if he could furnish me with the old St. Paul & Pacific Railway books, both the St. Paul & Pacific and the part of it which was afterwards split off,—the St. Paul & Pacific, First Division; and Mr. Drew was unable to find those books.

Q. What did he state with reference to their existence?

Did he say they had them or that they did not have them?

A. If I recollect correctly, it was that they had been turned over to them at some time but that now they were totally unable to find them and did not know where they were and had searched for them and could not find them.

Q. The history of the present Great Northern Railway system shows that it originated, so far as the construction of the road is concerned, with the St. Paul & Pacific road, to which you have just referred?

A. Yes, sir.

Q. To the first division of the St. Paul & Pacific?

A. Yes, sir.

Q. What were the earliest books—that is, what books did you obtain relating to the earliest period in the history of the System in the possession of Mr. Drew?

A. The books of the St. Paul, Minneapolis & Manitoba road, at their opening in 1879-1880.

Q. Those were the first authentic records that he claimed to have as actual book entries with reference to investments in the road?

A. Yes, sir.

Q. What did you do in that case with reference to the period preceding the formation of the St. Paul, Minneapolis & Manitoba Company?

A. I took the reports of these two companies (or two parts of the same company) the First Division and the branch lines, as they are termed, from the reports to the State Railway Commission of Minnesota, and also I supplemented that, as will appear in the testimony later, with certain items from different lawsuits which were brought, one by Receiver Farley against George Stephens and associates, and the other, the foreclosure records of the St. Paul & Pacific road.

Q. The St. Paul & Pacific road and the First Division of

the St. Paul & Pacific went into the hands of a receiver in insolvency, did they not?

A. Yes, sir.

Q. In what year?

A. 1873—1873 or 1874. I would say that the St. Paul & Pacific, itself, went into the hands of a receiver, the trustees of the mortgages took charge of the St. Paul & Pacific road, and ran it for a while under the trustees with the same man as general manager as was receiver for the Second Division; that is, was practically in the hands of a receiver, the trustees of the mortgage having taken charge, and then the foreclosure proceedings took place.

Q. Now, you refer to the Second Division; you mean the company known as the First Division Company, do you? There was no Second Division of the St. Paul & Pacific, was there,—official designation?

A. No, sir; I meant when the road was divided it was divided into two portions.

Mr. DURMENT: Now, which portion was it that was operated by the trustees for a time?

WITNESS: The St. Paul & Pacific, First Division.

Q. The receiver that was appointed to take charge of the properties was appointed by this Court, was he not, the United States Circuit Court?

A. The United States Circuit Court, yes, sir; if I recollect correctly, it was Judge Dillon.

Q. And the records of that receivership are among the records of this court in this building?

A. Yes, sir.

Q. The other case to which you refer from which you say you obtained some knowledge as to the original road, was a case brought, also in this court, by Mr. Farley, who was the receiver at the time of the foreclosure proceedings, through which the St. Paul, Minneapolis & Manitoba Company obtained title

to the lines of road?

A. Yes, sir; the title of the case (referring to papers) is Jesse P, Farley, Complainant, vs. Norman W. Kittson, et al., Defendants.

Q. And the other defendants were Mr. James J. Hill and Mr. John S. Kennedy, of New York, were they not, the Complainant in this case?

A. And George Stephens.

Q. Was Stephens one of the defendants in that case?

A. Yes, sir. I don't think Mr. Kennedy was one of the defendants.

Q. The action was brought against Kittson, Hill and Stephens?

A. Yes.

Q. The case in which Mr. Kennedy was complainant was the proceeding in which Mr. Farley was appointed receiver, was it not, or was it in the foreclosure proceedings, do you remember?

A. Kennedy was one of the trustees of some of the mortgages which were foreclosed and appeared in that.

Q. His testimony appears at intervals during the entire Farley case, but it is as testimony and not as either defendant or complainant.

Q. Do you remember whether Mr. Kennedy was a complainant on behalf of the bondholders in the case in which Mr. Farley was appointed receiver?

A. No, sir; he was first appointed receiver under the fifteen million dollar St. Paul & Pacific mortgage, and Wetmore et al were the trustees. I am not sure whether Mr. Kennedy was one of the trustees of that mortgage or not, but he was trustee on some of the other mortgages, and as such these mortgages became involved in the final suit.

Q. Well, in the administration of this property by the receiver appointed by the United States Circuit Court for this

state, the information is disclosed as to the extent, character and value of the road, is it not, to a large extent, and as to the amount of improvements and betterments added to it during the receivership period?

A. The amount of improvements and betterments added to it during the receivership period is shown in the testimony of the receiver but the original value of the road is not shown in the testimony of the receiver, as far as I have been able to trace (and I have looked very thoroughly through the records of the foreclosure proceedings); I do not find that he ever made a statement of the value of the property he took over. I have noted that, from time to time he complains that the president of the road, Mr. Becker, would not let him have possession of the books and that he was unable, therefore, to make a complete statement to the Court of his trust. I find this complaint immediately after his appointment, and also about one year later the same statement, that he was unable to get ahold of these papers. It seems, then, to have been abandoned by him and the property managed without his getting hold of the books, as far as we can tell, although at some time he must have received whatever papers were in existence.

Q. Then the road that was built by the St. Paul & Pacific and by the First Division of the St. Paul & Pacific was constructed within the state of Minnesota, was it not?

A. Yes, sir.

Q. And under the law of this state that company commenced making reports to the State which included a statement of the value of its properties as early as 1872?

A. Yes, sir.

Q. So that after examining these other records, you came back to the reports made by the Company to the State which were verified by the officers of that Company, were they not?

A. Yes, sir.

Q. Now, you may state to the Court what was disclosed by

those reports and whether those reports that you examined for the purpose of obtaining this information are on file with the State Railway Commission of this state.

A. They are on file with the State Railway Commission.

Q. Public documents of this state?

A. Public documents; yes, sir.

Q. Now, you may state what information you obtained from those reports.

A. The first information is, as you will note, on blue-print for Period No. 1—and I would ask that, as heretofore, these nine periods which I have taken up on the separate blue-prints be considered as one exhibit, divided into nine periods or tables.

Q. Before you make any explanation as to their contents, and for the purpose of bearing on the propriety of their being introduced as exhibits, let me ask you what plan did you adopt with reference to covering the entire period of the existence of the railroad.

A. I divided them into periods each one having reference to the time, or showing a dividing line, according to a road, or as to whether it was securities handled in lieu of cost of road and equipment. It seemed impossible to follow the changes and the entries from one set of books to the other and absolutely place in the period exactly the information which came to that period, as will be shown later in the testimony, especially with reference to the St. Paul, Minneapolis & Manitoba road. In order to trace these items and to keep them by themselves, and also to keep them in harmony with the Company's books so that their relations could be traced, I have used the period method and then made a summary on Period No. 7 for the cost of road and equipment, and on Period No. 9 for the entire amount.

Q. You have, then, divided the financial history of the road into nine distinct periods?

A. Yes, sir.

Q. The characteristics of each of which are shown upon separate sheets of your exhibit?

A. Yes, sir; with the exception that the fifth and sixth periods are on the same sheet, being very short.

Q. And the entire financial history of the road, or the history of its cost, is contained in these nine distinct sheets, which are grouped together, and each is so related to the other that they all make one continuous exhibit?

A. Yes, sir; through their summaries.

The exhibit produced by witness was marked for identification "Defendants' Ex. K-Hillman, 1 to 9, inclusive."

Q. Calling your attention now to Exhibit K-1, this exhibit purports to cover the period from beginning of construction of the road down to the time of the complete organization of the St. Paul, Minneapolis & Manitoba, as I understand it.

A. Yes, sir.

Q. Will you now please explain to the Master the contents of Ex. K-1?

A. The Ex. K-1 is divided into two portions; the first portion shows the cost of the road, derived from the figures given by the reports to the Railroad Commission by these companies, and also certain expenditures which were afterwards made by the receiver and by the purchasers of the road. In the first division of the cost we take up what is called the St. Paul & Pacific Railroad Company, First Division. The original company was split into two portions, leaving the St. Paul & Pacific Railroad Company as one portion and the first division as another portion. These were separately bonded and reported their bond issues separately and reported their doings separately to the State.

Q. Could you give the location of the road owned by each?

A. As a general proposition, the First Division consisted of the road from St. Paul to Breckenridge.

Q. 207 miles?

A. 207 miles; and also a portion (35 miles), running up the Mississippi river towards St. Cloud, which was handled sometimes in one report and sometimes in the other report not seeming to have any definite fixed location. The fact is that a certain small portion of that road, which was bonded for $120,000, here appears on both the Northern Pacific accounts and the Minneapolis & St. Louis accounts, having been, subsequent to this date, handed around from one road to the other; but each of those entries appears on the books of the companies and is handled properly. I only mention that to show how loosely this property was handled at that time and the difficulties of obtaining the exact figures. The other part of the road consisted of certain branch lines, built out from Brainerd a very short distance (I believe only three miles) towards the south—this part of the road is now owned by the Northern Pacific Railway Company—and of pieces of road from Glyndon north towards St. Vincent, and also a piece of road from Watab south.

Q. The total mileage owned by both companies amounting to about how much?

A. About 283 miles, with 104 miles partially completed road, which was afterwards completed and put together by Mr. Farley, the receiver, making improvements on the then existing 104 miles and putting on rails and whatever was needed and building the connecting links, all of which charge is shown in the amount expended by Mr. Farley, receiver, and shown on here.

Q. Now, then, the information with reference to the money expended by Mr. Farley was taken from his reports to the United States Circuit Court in the receivership proceedings?

A. Yes, sir.

Q. Now, confining yourself to the information obtained from the reports to the Railway Commission for the present,—

A. The annual report to the Railroad Commission for the

First Division, year ending 1872, gives an estimate by Mr. Becker, the president, of the cost of the road and of the equipment. His estimate is $10,740,274.36 for the road and $399,649.93 for the equipment. Mr. Becker states in his report that this does not include the value of the land-grant. In this I deem Mr. Becker is mistaken, for the reasons which I will mention. The total cost of the First Division of $10,000,000 for the road, divided by the mileage, would give a net cost of production of that road of $51,885 per mile, which is evidently an excessive amount. In 1873, Mr. Becker puts in his report an estimate of the value of the lands which have accrued to the Company and which will accrue to the Company, First Division, which amounts to $5,047,856.55. If we deduct this amount from the $10,740,274.36 given by Mr. Becker as the cost of the road and then divide the result by the mileage, we find that the amount charged to construction on this basis is $27,464 per mile—which is more than sufficient to cover any cost of construction in those days, for, later on, Mr. Farley, receiver, completed lines and put them in order for the sum of $9,700 per mile and delivered the road completed and in running order at that figure. Therefore, after deducting our land-grant, we have a cost per mile of road of $27,464, which would abundantly cover any expenditures which had been made on account of the road.

Q. About three times the cost of the construction of the road by the receiver, would it?

A. Yes, sir. The same would apply to the branch lines, where the cost as set up on Mr. Farley's report, would be at the rate of $49,444 per mile. If we deduct the valuation of the land-grant on this portion of the road which was given by Mr. Becker in 1873, viz., $1,632,122.60, we would have then a cost of construction per mile of $27,970 upon this portion of the road, which I consider as abundantly covering any possible construction which would accrue. I have also made a computa-

tion covering this point, from the records so far as I could get at them of the foreclosure proceedings. I find that, in the foreclosure proceedings, the president of the road, Mr. Becker, on page 17 of Wetmore et al., Trustees, vs. The St. Paul & Pacific road, states that the total amount of money received from the sale of bonds up to the fifteen million dollar issue (which I will treat in a moment, separately,) was 1,377,843 pounds sterling. Please recollect that this is the amount received by the agents of the company. The original bonds were put out at varying prices, and certain amounts were reserved to guarantee interest on the bonds pending construction, certain amounts were taken out for various commissions and for exchanges, and that reduced the amount to this sum. The same testimony, on page 73, shows the net returns on $9,000,000 of the $15,000,000 extension mortgage (which was a blanket mortgage put on the extensions) of 804,757 pounds sterling. I would say that this item here of 804,757 pounds sterling is also confirmed by statements which were forwarded from the agents of the company in Holland, Lippman, Rosenthal & Company, to the finacial agent of the company, and filed in this case in another portion of it, and I can't name who filed it, but I would simply say that it is on file (that statement) in the papers in this case, authenticated by these agents and it is also authenticated by Mr. Becker's testimony. Now, we also learn from the same testimony of Mr. Becker, that there were 10,700,000 of these bonds sold in Holland. The only statement we have shows the proceeds on the $9,000,000 sold. If we assume that the next 1,700,000 of these bonds brought the same net return to the company's agent, we would have a further sum on this $1,700,000 of 152,009 pounds sterling, making the total cash receipts which reached the company's agents, of 2,334,609 pounds sterling for the entire issue of bonds by the St. Paul & Pacific road and St. Paul & Pacific First Division. Reducing this to American money at $4.86, we would have a cost of $11,346,200. There

were then outstanding $4,300,000 of the $15,000,000 bond issue. In some way or other, Mr. W. G. Moorhead obtained possession of 30,000 of these bonds. It is not clear how he ever got them, but it is clear that everybody connected with the company made a demand on Mr. Moorhead to give them up, but as far as I can learn he never did so. The balance, $4,270,000 bonds were sent to Holland, delivered to the Holland bondholders, who, on the deposit of those bonds sent $900,000 to the agents in America. This makes a total amount of money put in the hands of the St. Paul & Pacific Company's agents of $12,246,200. From the testimony of the defendant in the Farley case, the exhibit being a letter of J. S. Kennedy & Company, the statement is made there, and is afterwards confirmed by a speech of Mr. Delano before the house of representatives of Minnesota—which speech also is in evidence as an exhibit, on page 180 of the defendant's testimony in the Farley case—the statement is made that less than $3,000,000 ever reached the construction of the road; that, in some way or other, the balance of the large sum received for the $15,000,000 mortgage, both the amount received for the bonds sold and the amount received on the deposit of the balance of the bonds, less than $3,000,000 reached the road. In the bill of complaint, (J. S. Kennedy et al., in the petition for a receiver, page 34,) the statement is made, "That said Moorhead, as agent of the First Division Company, received large amounts, proceeds of the bonds to be applied to construction, of which moneys he appropriated large sums to other uses." That seems to be the only explanation which occurs of how much of this money failed to reach construction.

Q. That was in the complaint of the plaintiff in this case?

A. Yes, sir.

Q. As he was complaining in that action?

A. Yes, sir. Let me quote the exact point where this testimony of J. S. Kennedy & Co. shows in the Farley case, which is also on record in this court. It is, in the printed form, Deft's. Ex. No. 120, page 285.

Q. You are referring now to an exhibit in an action brought by receiver Farley against Mr. Hill, Kittson and Stephens?

A. Yes, sir.

Mr. DURMENT: It was an individual suit, was it?

Q. That was a suit brought by Mr. Farley, was it not, to obtain an accounting of the profits made by Hill, Kittson and others, in the purchase of the road?

A. Yes, sir; I believe it was, but Mr. Farley thought he was entitled to a share with George Stephens and associates, and brought suit to establish his claim.

Mr. HOW: You say he claimed he was, rather than he thought he was?

Mr. DURMENT: All I wanted to appear is this: several times you spoke of it as a suit brought by receiver Farley; the case was not brought by him in his capacity as receiver at all?

WITNESS: No, sir.

Mr. DURMENT: It simply means he was the same party who had been receiver?

WITNESS: Yes, sir.

Q. It might be understood, then whenever you refer to the Farley case as such, under that title, you refer to the case brought by Mr. Farley after his receivership had expired, against George Stephens and associates, for an accounting of the profits made by them in the purchase of the road?

A. Yes, sir.

Q. And it involved the question of the value of the road and the entire transaction with reference to its acquisition by the Manitoba Company?

A. Yes, sir.

We find that the amount which was remitted to the agents of the road for this fifteen million dollar mortgage, (including the loan) amounted to $5,549,883. If we then deduct from this $3,000,000 which the testimony of J. S. Kennedy & Company shows was the limit of the amount which reached construction,

we would have a deduction from the $12,246,200, which I have mentioned above of $2,549,883, which would leave the total amount, the limit of money which reached construction, of $9,696,317, from the proceeds of bonds. This, of course, does not include anything which might not have reached the construction of the road from the sale of the bonds prior to the fifteen million mortgage. I have no information on that subject, and, of course, am compelled to leave it without comment, that all that reached the agents reached the construction.

Q. That is, you assume that it did?

A. Yes, sir. We then find that Mr. Farley, as receiver, expended, as I will discuss in a moment on the other exhibit, $1,016,300 to complete these roads, put them in order and build the breaks so as to make a completed line. We also find from the St. Paul, Minneapolis & Manitoba books that, subsequent to the assuming of these properties by the Manitoba road, George Stephens and associates, who were the purchasers—

Q. And who consisted of whom?

A. George Stephens, Donald A. Smith and James J. Hill.

Q. And Norman W. Kittson?

A. Yes, and Norman W. Kittson,—they expended $2,187,187.61, which was charged directly to their account on the Manitoba books of the construction items and was not in the nature of refunding of advances which they had made but was a direct charge to them for certain construction expenditures, which therefore showed that those gentlemen, after having taken up this road, expended this sum for putting it in a condition which probably they had agreed it should be placed in when it was taken over by the Manitoba road. The total of these sums amounted to $12,899,804.61. If we then add to this amount the value of the lands as shown by Mr. Becker on his statement to the Railroad Commission in 1873, we have a total investment of $19,579,783.76.

Q. For what?

A. For the cost of the road and equipment.

Q. And land?

A. And land; yes, sir.

Q. In other words, that is the value of the total property of the road,—

A. Yes, sir.

Q. —road equipment and granted lands? What I mean is the estimated value, at that time.

A. No, sir; I would state that that is the cost of them. The value of the property we will come to in the second division of this Ex. No. 1.

Mr. DURMENT: Well, it is really the cost of the properties, including the lands at the value placed by Becker?

WITNESS: Yes, sir.

Q. The cost of the properties to the Manitoba Company?

A. It is the limit of cost. We find also that there were certain items, from 1873 to 1879, added to construction. We will assume that the money for these additions came from some outside source rather than from the moneys which had been accounted for previous to this; though in this case, it is very possible that this money was part of the back money. But, assuming that it is not, and adding those items which are shown in detail upon the blue-print, we would have a total cost of $20,367,055.08, which is about $1,200,000 more than the amount which I have put upon the first half of my Ex. K-1, and would show the absolute limit of the cost of the St. Paul & Pacific properties.

Q. At the time they were acquired by the Manitoba?

A. At the time they were acquired by the Manitoba. That, you understand, is a limit-figure.

Q. It is not claimed to be accurate?

A. Not claimed to be accurate, but is simply put in here to show that in my exhibit (which I deem more accurate as to cost than that) the lands of this company were included in this cost

which I have shown upon Ex. K-1, first half, of the blue-print.

Going back to blue-print No. 1, you will notice that in 1873 the Company added $92,000 to its equipment. In 1874 they added $24,480.32 to the cost of road and $11,955.70 to the equipment. The total of these three items in equipment (the original report in 1872, and the additions in 1873 and 1874) would make an amount (which is carried out to the extreme right on this statement) of $503,748.97. But at this time Mr. Becker made a new estimate of the amount of equipment which he had on hand, and starts it in 1874 as $586,634.68. I have accepted and carried forward into the subsequent figures this higher estimate of the value of his equipment. 1875, 1876, 1877, 1878 and 1879 show the further additions to the cost of road and to the equipment made by the First Division Company. I call your attention there that these amounts for the equipment again come to $919,991.11, but the Company here give a new estimate of the amount of equipment which they have on hand, which I have accepted, as it is about $3,000 more than the amount which the summary of these items preceding them would show. This gives a total of the First Division cost, as shown upon the blue-prints, of $10,875,499.42 for the road and $923,158.06 for the equipment.

We then come to the cost of the St. Paul & Pacific Railroad branch lines or the original property. The annual report to the Commission shows a value of road and equipment, which is marked "estimated," as was the prior amount on the First Division, and also contains the statement that this does not include the value of the lands. Following this, in exactly the same method down to 1879, we have a total cost of the branch line road, $3,952,408,43; of the equipment $216,132.56. I would call attention to the fact that in 1874 a new estimate was made of the value of the equipment, and as this estimate was in excess of the amounts which I could find as charged to this account heretofore, I accepted it as the figure and took the

higher figure into my estimate of cost. Adding to these costs the First Division, we have total cost of road on the whole line of $14,827,907.95 and of equipment of $1,139,290.62. Adding these two together, we would have a total for the cost of road and equipment of $15,967,198.57. Receiver Farley reports the completion of certain lines, which is shown in Ex. 162 in the Farley case, and is also shown by the records in the foreclosure proceedings, Wetmore et al, in this same court, of $1,016,300. Subsequent to the acquirement of this property by the St. Paul, Minneapolis & Manitoba road, certain items of construction and of expenses were charged back to the account of George Stephens and associates. I take it that these amounts so charged back to their account were moneys which had not heretofore been paid in the acquisition of the property, or were amounts which it was deemed proper that they should expend in order to put the road in a continuously first-class condition. In either way, the fact remains that they did expend $2,187,187.61 on the improvement of this road, which was charged directly to their account on the books of the Company, and therefore should enter into the cost of the properties as taken over by the Manitoba road, although the road was actually in the hands of the Manitoba Company prior to the expenditure of these sums. I have therefore added it to this cost, which makes a total, on this basis, of $19,170,686.18 as the cost of the road at the end of the St. Paul & Pacific period.

Q. Now, that is what you intend to designate as the maximum cost, taking every possible expenditure and consideration into account?

A. Yes, sir.

Q. It could not have cost more than that, as I understand you?

A. That is my opinion; yes, sir.

Q. You may proceed to explain the additional portions of Ex. K-1.

A. When the Manitoba Company, (that is, the St. Paul, Minneapolis & Manitoba road) took over these properties, they issued eight million first mortgage bonds, eight million second mortgage bonds; they assumed St. Paul & Pacific bonds $120,000 and another issue of St. Paul & Pacific bonds of $366 000; they also issued $15,000,000 (par) of stock, making a total issue of securities to take over this property that we have just mentioned of $31,486,000. They obtained with the road $188,971.63 worth of supplies, which I deduct from the above total of bonds issued, making the net cost, paid in stocks and bonds for the road and its equipment, of $31,297,028.37.

Mr. DURMENT: You said road and equipment; that included lands, also, did it not?

WITNESS: Yes, sir; the lands were purchased and acquired when the Manitoba took over the St. Paul & Pacific road.

Deducting from this amount the cost of the property on the method which I have just explained, we have an excess issue of bonds and stocks over the cost, of $12,126 342.19.

I have made a note here, which was intended by me as a lead for possible information which might accrue which I have not been able to obtain, and that is that up to the taking over of the St. Paul & Pacific by the Manitoba road there had been received $4,461,623.32 for land sales, and what disposition of this sum was made does not appear. It did not go to reduce the cost of the properties.

The next half of this division shows the cost of road and equipment of the St. Paul & Pacific road on the basis of Mr. Hill's testimony, taken from the Farley case which I have mentioned. Mr. Hill's testimony (Q. 180, direct examination) says that the offer to the Dutch bondholders was based upon the total value of the property.

Q. Now, let me ask you for what bonds,—was that for all of the bonds?

A. For all of the bonds; yes, sir.

Q. All of the outstanding bonds of the—

A. All of the outstanding bonds were included. I will explain, in a moment, about these amounts, which possibly is what you are asking for in your question.

Q. Yes.

A. This offer, as shown on Defts'. Ex. 13 in the Farley case, was made, placing opposite each class of bonds a price at which the bonds were to be taken in. In the subsequent portion of the letter of May 26, 1879, where this offer was made, Mr. Hill states that he does not care particularly what value is assigned to any particular class of bonds as long as the total amount to be paid in for obtaining possession of these bonds does not exceed the total amount which he had named or which he had indicated by placing a price opposite each series of bonds, and he leaves it to the bondholders to determine exactly what division they will make between the classes of bonds. We find that at this time the total mortgages are recounted on this Ex. 13. Taking the total amount of the issue at the price named by Mr. Hill gives us the figure shown here, $6,746,500. At this time, some of these bonds were presumably held in escrow, and some of them—not very many, but some of them—had been redeemed by land sales, so that the amount outstanding of these bonds was considerably less than the amount which is mentioned here. I came across a set of figures just yesterday evening which would indicate that the amount of outstanding bonds taken at this price would be about five million and a half dollars. But it seems that somewhere the escrow had slipped and that the bonds had become alive and outstanding and therefore I deemed that the only safe way was to take the absolute amounts of the issue; things seemed to be conducted quite loosely in those old days on the St. Paul & Pacific, and not much attention was paid to escrow or trusteeship, or anything else—that is, according to the figures which I have been able to find—That may be an adverse criticism on the former trus-

tees in this case and there may be papers in existence of which I am not cognizant which would remove this criticism but I am only mentioning this here not as a criticism but to show the reason that I took the total issue of the bonds and applied the prices to them rather than to take the outstanding bonds or what should be outstanding as shown by the Company's books.

Mr. DURMENT: That is to say, by following the plan you did, the amount which you show this property cost them is increased over what it would be if his offer had applied only to the bonds that had been issued and not tied up in escrow?

WITNESS: Yes, sir; and were nominally outstanding at the time.

Mr. DURMENT: It increases the price or value, this method you have followed, instead of decreasing it?

WITNESS: Yes, sir. Another thing that may tend to my taking this price is that when a party buys the outstanding bonds under certain conditions, he would be entitled to the escrow or canceled bonds, such as might have been canceled, or to the escrow bonds, and it might have been in making this offer Mr. Hill made the calculation that in some way or other he would have to account for all those securities, and, therefore, to be on the safe side, I have taken the full amount of the issue and applied the prices to them that he offered.

We then add to those amounts the amount expended by receiver Farley, as shown above and the subsequent expenditures by George Stephens and associates, as shown above, making a total value of $9,949,987.61. If we deduct this from the amount shown as the cost of road and equipment taken up by the St. Paul, Minneapolis & Manitoba road when they opened their books, we have an excess of stocks and bonds above the value of $21,347,040.76. For convenience sake we leave this table now until we come to the summary in Period 7.

Q. Now, according to the figures appearing on this last subdivision of Ex. K-1, taking the amount paid by the promoters

of the St. Paul, Minneapolis & Manitoba Railway Company at the mortgage sales, and adding to that amount the sums expended by receiver Farley and the sums expended by Stephens & Co., the total cost of the road at the time of the issuance or capitalization of the Manitoba Company was $9,949,987.61?

A. That, sir, you might say, is the estimated value of the road. At foreclosure this amount was not paid; the bonds were purchased from the Holland bondholders at this figure, but I do not know now, though I have looked it over (I don't remember) the figure at which the road was finally purchased. And with that, I would not take that into account for the reason that there are so many things at a foreclosure sale which enter into it, the price set up being generally a nominal one, being understood it will be paid for in securities of various classes and kinds, that I did not go into that at all, but I would say that this shows an estimate by one of the purchasers of the road, of its value at the time that he purchased it.

Q. The prices given by Mr. Hill in his offer to the Dutch bondholders to which you have referred were based upon his estimate of what the road was then worth?

A. Yes, sir.

Q. And was so stated by him?

A. That it is based upon the value of the properties and not upon the value of the different classes of bonds and that therefore they could adjust the prices of the different classes of bonds to suit themselves as long as they did not exceed the total amount which he had offered for the bonds.

Q. And this offer was a matter of private negotiation before the sale and was a statement of what they intended to bid at the sale?

A. No, sir; at the time that the sale took place Mr. Hill and associates had acquired these bonds from the Dutch bondholders and were the holders of them.

Q. Oh, at the time of the sale?

A. Yes, sir.

Q. They had acquired them under this negotiation that you refer to?

A. Under this negotiation; yes, sir.

Q. And at the time of the sale they turned the bonds in as payment of the road?

A. Yes, sir; some of the bonds were turned in in payment and some of these receiver's certificates which Mr. Farley had issued were turned in as a cash payment.

Q. The receiver's certificates pertain to the expenditure of the $1,016,000 by the receiver?

A. Yes, sir.

Q. Now, is there any further testimony or any further information which you obtained from either the foreclosure proceedings or from the suit brought by Mr. Farley against George Stephens and associates, for an accounting which showed the amount actually expended by the promoters of the road and from what sources it was obtained?

A. No, sir.

Q. Do you remember whether in the complaint or evidence in the Farley case there was any showing as to the amount actually expended for the acquisition of the road?

Mr. DURMENT: That is, by Stephens and his associates.

Q. By the promoters of the Manitoba Company.

A. No, sir; there were not, that I recollect, specifically. There were some general statements made in there concerning it, but they are in the plaintiff's testimony and not in the defendants'.

Q. That is, in Farley's testimony?

A. In Farley's testimony and not in the defendants', and was a statement that the amount of the first mortgage covered all the cost to them, something of that character.

Q. That is, the first Manitoba mortgage, the eight million dollars?

A. Yes, sir. I didn't follow that up, for the reason that it was testimony which might be uncontradicted in that case, but was not the defendants' testimony, and as practically the defendants' testimony in that case would be the plaintiff's testimony in this, I have confined myself entirely to taking those statements from the defendants' testimony.

Q. You confined yourself, therefore, to the testimony taken from Mr. Hill's communications?

A. Yes, sir.

Q. Or Kennedy's?

A. Or from such testimony which might be presented by the plaintiff in the Farley case which could be confirmed by the other testimony in the Farley case or by the foreclosure proceedings. They would be the item of $1,016,300 expended by Mr. Farley, receiver, and would refer to that item.

Q. Well taking one of these theories for getting a starting point as to the value of the property at the time of its acquisition by the Manitoba Company, then, if we take this last estimate, the cost would have been $9,949,987.61; if we take the first, which you designate the "total outside cost," it would be $19,170,686.18?

A. Yes, sir.

Q. In either case, the capitalization of the Manitoba Company, issued ostensibly for the purchase of these properties, greatly exceeded the cost of the properties?

A. Yes, sir; in the first case, it exceeded the cost of the properties by $21,347,040.76; in the second case, it exceeded the cost by $12,126,342.19.

Q. Now, then, Mr. Hillman, upon either theory as to the cost of the properties to the Manitoba Company, assuming that the securities issued by the Manitoba Company were sold for their face value, there should be in the treasury of the Manitoba Company a large amount of cash upon the one theory something over twelve million dollars, and upon the other, something

over twenty-one million dollars over and above the cost of the properties. Did you find, on the examination of the books of the Manitoba Company at the time of the acquisition of these roads, that there was any cash acquired from the disposition of its securities, or were they all absorbed in the acquisition of the property, or ostensibly absorbed?

A. They were absorbed in the acquisition of the properties. I did not look at their cash balance at the time the books opened or at the end of the first year. If that is an important point I could find it from the papers I have here with me, if you desire, at the end of the first year their cash balance.

Mr. DURMENT: Would you have it at the opening of the books?

WITNESS: No. sir; I didn't take that off.

Q. That is when it would be important, to find out whether the securities were offset against the cost of the road in bulk or not.

A. They were offset against the cost of the road in bulk, I can state that.

Q. You know that?

A. Yes, sir; from the opening of the books.

Q. Calling your attention now to Ex. K-2, please explain to the Master the matter contained upon that sheet, especially the first item here, which is noted upon this sheet as "Cost of Road and Equipment as Shown by the Opening Entry of the St. Paul, Minneapolis & Manitoba Books."

A. The St. Paul, Minneapolis & Manitoba books show an opening entry—

Q. At what time?

A. On the acquisition of the road, June 30, 1879; it might have been some date just a little subsequent to that, but that is my recollection, that that is the date; it might have been thirty or sixty days from that point. The total cost of the road, as shown by the opening entry, was $30 811,028.33.

Q. That included the road and the equipment?

A. That included the road and equipment.

Q. And granted lands?

A. And granted lands. That is the entire property. You might call it, as they have in the Northern Pacific case, the "entire estate." They have used that term. Now, here is a notation over to the right here. I said "Included in Roads, equipment." In my original papers, under "cost of equipment" I had that included in roads, the stenographer having directions to put all writing over on this line, moved it over there; I was in error in not notifying her to do it; therefore I added the word "equipment" after that. It simply means there that at that time the cost of the equipment was included in the cost of the road as per Company's books. A few years later they make a segregation of these items, as we will come to it; that is the only meaning of that notation there.

Q. Please explain to the Master the plan of this exhibit and what is intended to be included in the first column of figures, what in the second and what in the third.

A. In the first column of figures I take the cost as shown by the Company's books of the road, that meaning the lands and the roadbed and improvements, as distinct from the equipment, which is rolling-stock of the road. In the second column is shown the rolling-stock or equipment. The third column shows the items which I have deemed were excess cost and should go to reduce the cost of road and equipment. I have carried them in this method in order that these amounts may be readily checked with the Company's books at the end of any given period with the books of that Company which is under discussion.

Q. Now, referring still to the plan of the construction of this exhibit whatever appears as an addition or a deduction in the first column of figures is intended to indicate an addition or a deduction made upon the books of the Company?

A. Yes, sir.

Q. In other words, that column is taken absolutely from the books of the Company?

A. Yes, sir.

Q. The first column of figures?

A. And the second column, also.

Q. And the second column, also. The third column is the only one containing figures which you have deduced from your examination?

A. Yes, sir.

Q. The deductions are marked with a cross, and the additions have no such mark?

A. No, sir. Wherever there is a cross after an item it means that that item is to be subtracted and not added. You will note that the Road opened its books with $30,811,028.33, and that they then immediately added to that cost of road and equipment the par value of the bonds which they had assumed of the St. Paul & Pacific road. As I had taken these bonds into account on the first period, Ex. K-1, I allowed, of course this $486,000 as a legitimate addition to the cost of road and equipment for the reason that I had already taken it up and considered it in the first period; therefore, having included the excess which would accrue on these bonds in the first period, I should allow this addition to the cost of road and equipment, as shown by the books, in the second period. If you will add the first and second items on those two together, you will see that they correspond with the net amount paid for construction and equipment as shown by me on statement Ex. K-1, that is, $31,297,028.33. The third line of statement K-2 shows bonds redeemed to the amount of $161,100. These were redeemed by land-sale funds, and were properly deducted from the cost of the estate.

Q. And the deduction was made by the Company?

A. The deduction was made by the Company. This gives

us a cost, as shown by the blue-print, as per Company's books on June 30, 1880, of $31,135,928.33. I believe heretofore I called your attention to the fact that in each of these cases I have shown the cost, as per Company's books, as far as possible, and have carried period by period, commencing with their cost, so that it can be readily followed and that the deductions then can be made in bulk at the end. Therefore, while I do not accept this as the proper cost of the road, I have started statement Second period with the cost as shown by their books with the intention of later on, in the summary, deducting the excess cost which is included in that $30,800,000 from it. The additions during the year 1880-1881 amounted to $4,306,805.21. Included in these additions to the road is an arbitrary cost of $15 per ton on rails laid "steel over iron." I have allowed it here but have taken it out in bulk in 1885 and 1886.

Q. Please explain what that means, "steel over iron."

A. I will explain this item: the old road was laid with iron; the iron going out of fashion, steel coming in, the new road was laid with steel. The amount and cost of these steel rails were charged out from what we call the storekeeper's account as a general thing, but in this case the Manitoba call it material and supplies for mechanical department, I think, I am not sure; but it is material and supplies for the roadway and structures. I can't remember just the exact title of that account, but it is the storekeeper's account; it is the amount of supplies that they have on hand. The steel rails were charged at that time from that account at their cost.

Q. That is, at their full market cost?

A. Their full value. The laying of the steel rail on the road improved its value, in the estimation of the parties then in charge of the Manitoba road therefore an arbitrary charge of $15 a ton for every ton of rail laid on account of the value of steel over iron in the track was made. This was charged to the cost of road and equipment and was credited to the store-

keeper's account or to the supply account, (I will call it to the supply account) which would rapidly accumulate a surplus in the supply account above its book charge. That is, if we allowed the storekeeper $15 a ton extra on rails and credited him with that disbursement, he would soon have a larger amount of stores on hand than the books showed him to have.

Q. Was the cost of all of the steel rails purchased by the Company for the purpose of making this improvement upon the track included in this item of $4,306,805.21?

A. Yes, sir; it was.

Q. And the cost of laying them was also included in that item that was intended to cover all expenditures of the Company for betterments and improvements that year?

A. Yes, sir.

Q. The alleged additional value which the road possessed after the steel rails were laid was a purely arbitrary value, was it not?

A. Yes, sir.

Q. The cost of the rails and the cost of laying them having been paid for in the other item of $4,306,805?

A. Yes, sir; and in addition included in that $4,306,805 of course, is the extra charge of $15 a ton on the rail that is included in there.

Q. That is included in there to make that up?

A. As well as the original and proper cost of the rail.

Q. Are you able to say how many tons of steel rail were laid that year, so as to ascertain how much of that item of $4,306,805.21 consists of this arbitrary valuation?

A. No, sir; this occurs in three or four years following, and I simply ran the amount up to see that this $15 a ton exceeded the amount of an entry which they had made of $500,000 subsequently and for the period where this appears (I think it covers there three or four years) it was a little over $682,000. When I came to make the deduction on account of this item

from the cost of equipment, the amount which I deduct is only $500,000, as that was all that was claimed by them. That would leave $182,000 to go to the general account to make up any shortages which might have occurred in their material account up to this date. We all know that in handling material there are more or less shortages which must be taken up, and therefore I allowed the balance of this amount to go to taking up those shortages in material should any exist. I simply determined the fact that this $15 per ton credited to material account exceeded the amount which was afterwards debited to material, so as to be sure that there had been no slip in that question.

Q. And you took that entire item, then, of an arbitrary charge of $15 per ton on rails during the period while that practice was followed by the Company and then deducted it in a gross sum, which you will explain further down in the item?

A. Yes, sir.

Q. And make that here merely for the purpose of calling attention to the fact that this is where that arbitrary charge begins?

A. Yes, sir. The next item is a deduction of bonds redeemed $617,200, which the Company have deducted from their cost of road and equipment.

Q. And that deduction is on account of land sales?

A. Yes, sir.

Q. Wherever sales have been deducted on account of bonds redeemed, it is because of money acquired for that purpose out of land sales?

A. Yes, sir. I have made an item of excess cost here, which is shown upon the Company's books, and that is $48,000 of the $4,306,805.21 was discount on bonds for the Dakota extension. I think, probably, here I might as well explain my position on this matter of discounting bonds. We are now determining, as far as possible, what the absolute cost of the road and its

equipment is. It is evident that, in no way, could a discount on bonds enter into the cost of a road. We can illustrate that, for example, by supposing that the Chicago, Milwaukee & St. Paul road or the Northwestern road would build to the Coast, and supposing at the same time the Chicago, Great Western road would build to the Coast—

Mr. HOW: I think we ought to object to the witness making an argument upon the law. That is what he is doing now.

Attorney General YOUNG: Oh, no, he is not.

Mr. HOW: This is a question for the Court to determine and not for him; he has put in his figures. I don't want to sit and listen to it.

The MASTER: I think I would rather hear from counsel than witness on that.

Attorney General YOUNG: The only thing that Mr. Hillman had in mind was to give the reason that occurred to him (which is very brief) why he put the discount of bonds in this column. Of course, it is a question for the Court.

The MASTER: That is one of the questions that has arisen early in the case, the question whether discounts enter into the cost of the road.

Attorney General YOUNG: He is only explaining why he has carried that into this column, only giving the reason that occurred to him. Of course, it is a matter of argument largely, and probably it does not add very much to the strength of his exhibit, because his theory, as I understand it, is that while one company might have the money and sell its bonds at par, another company might be unable to do so; while the actual cost of the road would be the same in each case the actual value of the securities might not be the same.

Mr. DURMENT: Well, it is perfectly apparent that it is only the money that the Company gets from its bonds that can be used to buy material.

Mr. HOW: Don't let's argue the question now.

Attorney General YOUNG: We don't care very much whether he states his reasons or not because that is a matter of argument.

The MASTER: I would rather hear counsel on the reason than to hear the witness.

Mr. DURMENT: It is perfectly apparent here that he has done it.

The MASTER: Of course we understand exactly what he has done; he eliminates the discounts and credits up just the actual money that was received and put into the road.

Attorney General YOUNG: Yes.

Q. And in each case, Mr. Hillman, where you found the books show a discount on bonds which they had charged to the cost of construction, you carried it into this column of items of excess cost for the purpose of deducting it from the cost of construction?

A. Yes, sir.

Q. And the correctness of your method in that regard is for the Court to decide, of course.

A. Yes, sir; certainly.

Q. You don't assume to say?

A. I am perfectly willing to forego any statement of reasons for that; it is just as you gentlemen determine.

Recess until 2.P. M.

AFTERNOON SESSION.

Q. When the Court took a recess, Mr. Hillman, we were discussing the first item appearing in the third column of Ex. K-2 under the heading of items of excess cost as determined by accountant for State, an item consisting of $48,000 said to be discount on bonds issued for the Dakota extension. You stated, I believe, that that item was included in the gross item appearing upon the Company's books under the head of Additions during the year 1880-1881, which amounts in the aggregate to $4,306,805.21?

A. Yes, sir.

Q. Now, laying aside the question as to the propriety of taking it out, it is a fact, is it not, that wherever bonds were sold at a discount the amount of the discount was included in the alleged expenditures for that year on the Company's books?

A. Yes, sir; with one exception, which we will note later on, that was done.

Q. And under your plan, you have, in each case, carried the amount of the discount into this third column, to be considered by the Court as to whether it belongs in the amount of the expenditures or not?

A. Yes, sir.

Q. And where you have made the footings for different years, or where footings appear in this first column of figures for the different years, they are the footings made by the Company in their books?

A. Yes, sir; and agree with the Company's books as to their amount of cost of road and cost of equipment; and in using the term cost of road from now on, I have included the cost of the estate, you may say, outside of the cost of the rolling-stock.

Mr. DURMENT: You did also in your testimony before, didn't you, this morning, as a rule?

WITNESS: Yes, sir; I believe so, except where I have specifically designated it as the cost of the road exclusive of lands, as I did in the discussion of part of Table No. 1.

Q. You may go on with the next item.

A. The next here, year 1881-1882, shows an expenditure for additions of $3,590,502.18. This item also includes the arbitrary of $15 per ton on rails, about which I spoke in the prior year, credited as heretofore to the material on hand. The next item is "Bonds redeemed" $721,700, which have been deducted from the cost of the road as shown upon the Company's books and taken by them from the totals. These totals, in each case, in column No. 1, show the totals represented by the

Company's books. I believe that in one year there is a slight discrepancy of a few cents which I have taken up in the next year, but I have discarded all such items as that. I think there was such a case but it was of no moment.

Q. So that the only constituent of that gross amount said to have been expended in the years 1881-1882 to which you make any objection, is whatever sum was made up of the arbitrary of $15 per ton on rails?

A. Yes, sir. The next year the additions to the cost of the road were $6,647,528.28. The additions to equipment in that year were $1,688,741.09.

The next item is a deduction from the cost of road and equipment, which is called the Northern Pacific Settlement. At this time, the two roads, the Manitoba and the Northern Pacific, exchanged certain pieces of track and made a settlement of their accounts and, included in the settlement, they transferred stocks of different roads one to the other. They transferred pieces of road one to the other. I have not analyzed that settlement at all to see how much of it was transferred in the nature of stocks one to the other or how much in the nature of bonds. I have accepted the fact as shown by their books that in that settlement the cost of the Manitoba road was reduced by $268,363.90.

Q. That was deducted by the Company?

A. By the Company, yes, sir; and they had so much less property after they had made that settlement than they had before.

The next item is a deduction from the cost of road and an addition to equipment of the amount of equipment which was on hand at the commencement of this fiscal year which ended June 30, 1883; so that, from now on, the Manitoba books show the cost of the road and the cost of their equipment separately.

The next item is the bonds redeemed which have been deducted by the road from the cost of the road. In the third

column there is an item put as an excess cost of $355,080.67; this is by journal voucher 74, June 30, 1883. This was an arbitrary charge to interest account that year, amounting to this sum; it was charged to the M. & N. W. R. R. (Minneapolis & Northwestern Railroad) and the St. Cloud & Duluth Railroad. It has no reference to the amount expended. The road had all year a heavy cash balance. I will explain that item as follows: There was a charge to interest account on the Company's books that year amounting to this sum which I have mentioned; they, for some reason or other, desired to get rid of that amount; they therefore made a journal entry and transferred the entire interest charge to the cost of these two roads, although this item had no total reference to these two lines; there might have been included in this $355,080.67 some items of interest charges which would be properly chargeable to this M. & N. and the St. Cloud and Duluth road, but they would be very small and amount to nothing like the sum here. Not being able to determine exactly these amounts, I have therefore put the entire item in the excess column. But to whatever extent it could be shown that the expenditures on these two roads for that year required interest charges this amount of $355,080.67 should be reduced.

Q. Now, then, in the item of $6,647,528.28, purporting to represent the cost of all additions during the fiscal year 1882-1883, there is included the $15 arbitrary upon steel rails over iron?

A. Yes, sir.

Q. The same as in the two previous years?

A. Yes, sir.

The next year we have additions $5,190,084.12 to the road; we have additions of $457,040.09 to equipment. In this charge of $457,040.09 there is a charge to equipment of $432,820, which was an arbitrary charge on the books of the Company to the cost of equipment. No such amount of money was ever ex-

pended by the Road for that equipment. The sum properly expended for equipment, as shown by the books of the Company when the final entry is made, and as shown by their reports to the Railroad Commission, was $21,220.09. You will note that this $432,820, together with another correction which they had of $3,000 on account of some error in addition or something of the figures before, has been deducted from the $457,040.09 in the equipment column. In order to make this deduction of $435,820, the $432,820 was apportioned to various roads or portions of road which were then under construction and added to the cost of the road; otherwise to the construction of the road under question. Thus the cost of the road, as shown in column No. 1, was arbitrarily increased by $432,820, and this amount credited back to the cost of equipment. The original debit to cost of equipment had no existence was simply an arbitrary matter, no expenditure whatever was made for equipment representing that sum. I have therefore placed in the excess column this amount.

Q. The effect of the manner in which that was handled by the Company was what?

A. To add $432,820 to the cost of road without a penny having been expended therefor.

The next item is $543,100, credited to freight earnings and debited to unbilled freight. I have the notation that this is simply a bookkeeping entry to swell freight earnings at the expense of construction, does not represent the real cost of the hauling of Company's material, it already having had a credit for that. I mean by that that later on the items for the cost of carrying Company's material were taken up and an estimate made of them amounting to $445,000 for all those items up to date, and that therefore this represents no cost whatever. The method of making this entry upon the Company's books was rather peculiar. From time to time during the year an account which is called "Unbilled Freight" was debited and freight

earnings were credited; the next entry—separated at some little distance on the Company's books from this—debited operating expenses and credited unbilled freight. The next entry debited the cost of certain portions of the road and credited operating expenses. This unbilled freight represented nothing. The year previous to this there was an item of $276,000 in unbilled freight; there were none of these subsequent entries which I have named entered into that $276,000, or none that I could trace, and I have therefore omitted that amount of $276,000 for the previous year which came in through this unbilled freight from any comment beyond this passing one: the result of this entry is to increase the cost of the road by $543,100 and credit freight earnings with that. There was no expenditure represented in the road by this entry. The original entry was made month by month debiting unbilled freight and crediting freight earnings. At the end of the year this was gotten rid of, as I stated, by debiting unbilled freight, thus clearing the account, there being nobody to bill for it at all, no bills to go out for it, and debiting operating expenses. Now, operating expenses were a fixed sum, in my opinion, and represented by the pay-rolls, the material account and the vouchers paid for the different expenditures made, and this charge of $543,100 to operating expenses was an arbitrary increase of the operating expenses without any corresponding expense. It was then immediately, by the next entry, credited back to operating expenses and charged to cost of road; the net result of the entry being that $543,100 was credited to freight earnings and charged to the cost of road.

Q. It would be the equivalent of crediting to the earnings that amount of capital, would it not?

A. Yes, sir.

Q. What would be the effect upon the current accounts of the Company arising from that original entry credited to freight and debtor to unbilled freight? it would swell the ostensible earnings for the year would it not?

A. It would swell the earnings and the income of the road and eventually the dividend account.

Q. And by the two succeeding entries the same item was carried first to operating expenses and then to cost of road?

A. Yes, sir.

The next item is "Deduct the error in charges and sundry bills $32,667.56," in the first column. This item was credits which were due the cost of road, probably for building side-tracks, the portion of which expense would be charged to the shipper using the track, and to some small error which had crept into their accounts which had been deducted subsequently and put back to the credit of the road. It is a legitimate item, shows from their books, and has been accepted.

Q. This is a deduction made by them?

A. Yes, sir.

The next item is deduction made by them of $400,000 on account of bonds redeemed.

Q. That arises from land sales?

A. Yes, sir.

The next item is deduct charges to operating expenses of $230,000. This I have deducted, because later on, this item was recharged, in 1886 and 1887, on an adjustment of which I have spoken when discussing the $543,100. I therefore allowed it to remain as a deduction here, and have added it into the cost of road and equipment where it occurred some few years later.

The next item, in column 2, is a deduction from the cost of equipment of which we have spoken, reducing the net cost of equipment that year to $21,220.09, as shown upon the report to the State Commission.

Q. But, as you said, leaving the item of $435,820 still in the gross sum appearing in column 1?

A. Yes, sir.

The next item that we consider is in column No. 3, amounting to $3,149,022.90. During this year a dividend of 45 per cent

was paid to stockholders which amounted to $9,000,000. This was paid in consolidated mortgage bonds. An issue was made of $10,000,000, stockholders subscribed ten per cent of that amount or $1,000,000, and $9,000,000 was issued to them as a dividend on account of surplus invested in the road. There was not enough surplus, as shown by the books of the Company, to meet this $9,000,000. Therefore, an entry was made on the books of the Company debiting cost of road and equipment and crediting profit and loss with $3,149,022.90.

Q. Was there any money expended for any purpose as shown by the books of the Company, to justify that charge of cost of road and equipment?

A. No, sir; there was no expenditure of any character named. The general voucher which carries it states that it was on account of the amounts which the stockholders had invested in the road heretofore, and that therefore the amount should be credited to profit and loss. But the amount was an arbitrary entry; no profit had accrued to justify it.

Q. And it is represented by general voucher No. 54 of June, 1884, is it?

A. June, 1884, yes, sir.

Q. Does that journal voucher purport to state what the items of the alleged expenditure consisted of to justify the entry?

A. No, sir; it is a plain journal entry, bearing the debit cost of road and equipment and the credit to profit and loss, and with a notation not exactly in the words that I have given but having that meaning, that it was on account of earnings which had heretofore been invested in the road.

Q. Was there anything in the books which you found up to that time to indicate that any earnings had been invested in the road which had not been properly charged to the road?

A. No, sir; neither earnings nor had any charges been made through earnings to operating expenses which would in any way justify any such entry.

Q. You stated that a dividend of $9,000,000 was paid to the stockholders that year in consolidated bonds, the bond issue being $10,000,000, distributed to the stockholders, upon which they paid ten per cent and received a credit of ninety per cent on account of the surplus appearing in profit and loss account; did the dividend so declared absorb the alleged profits in the profits in the profit and loss account?

A. No, sir, at the end of that year there was still a small amount, I believe less than a million dollars, left in the profit and loss account. I can give you that if you desire. I have the detail here.

Q. But the amount left in profit and loss account at the end of the year was less than this item of $3,149,022.90?

A. Yes, sir. The rough figures are that, at the close of fiscal year immediately preceding this, there were $5,529,000 in the profit and loss account; this arbitrary entry raised that to $8 678,000, and then the balance of the profit and loss accruing during that year was taken up into profit and loss account, of course, and the result was that they still had some left in profit and loss after closing out the $9,000,000. I would call your attention to the fact that the $543,100 also went into profit and loss in this year.

Q. That is the item you have been discussing just before this?

A. Yes, sir.

Q. Credit to freight and debtor to unbilled freight?

A. Yes, sir. The cost is then shown on the blue-print, as per Company's books, of June 30, 1884.

And I now pass on to the year 1884-5. We have an addition to both cost of road and to equipment in this year, and also a small deduction from the cost of the road on account of sundry bills, all of which items are shown upon the Company's books.

Q. I wish you would make the statement, so that your evidence when read by anybody who has not before him the

exhibit would show which deduction was made by the Company and which by you.

A. Yes, sir.

Q. The deduction that you have just referred to is a deduction made by the Company itself?

A. By the Company itself, in the $165,118.27 charged by the Company to cost of equipment, during this year, appears again an item of an arbitrary charge to the cost of equipment, which arbitrary charge is again prorated into the cost of road. This amounts, in this case, to $115,840, which being deducted from the above $165,118.27, leaves net amount to the debit of equipment, as shown upon the Company's books and their report to the State, of $47,278.27. The result of this entry is, as the similar entry in the previous year, to add to the cost of road and equipment $115,840 for which no expenditure whatever had been made.

The next item in column No. 3 is $408,160, again a manipulation of the freight earnings through unbilled freight and operating expenses into the cost of the road and equipment, no expenditure having been made for this purpose, and leaves, as in the prior year, a credit to freight earnings of $408,160, which is charged to the cost of the road.

Q. And which was not earned in freight operations?

A. No, sir, there was no earning for it. This will be made more apparent that there was no earning for this by the treatment of the same item a few years later on.

Q. Now, let me ask here whether this entry was carried through the same process as the credit to freight and debtor to unbilled freight during the year 1883.

A. Yes, sir; same process.

Q. It was first charged out of this account into operating expenses, and transferred from operating expenses to cost of construction?

A. Yes, sir; unbilled freight debited, freight earnings cred-

ited for the first entry; operating expenses debited, unbilled freight credited the second entry. Third entry, cost of road and equipment debited, operating expenses credited.

Q. Is there anything about the books or the entry that would in any way enable you to ascertain what could have been used as a basis under the head of Unbilled Freight, if there was anything? You say the Company's freight was accounted for otherwise and charged.

A. Yes, sir. It is my impression from the crediting of that entry of unbilled freight upon the Company's books it was originally intended to get into the earnings, as earnings were evidently entered at this time, to get into the earnings of the road what we would call the interline settlements.

Q. Just explain that.

A. Freight having gone over the road destined to other companies is not credited, as a general thing, to the freight earnings of the road until they receive the remittances from what they call the road of final destination. In the matter of the $276,000, which I mentioned as occurring prior to this first entry that I criticized (the $543,100) it was apparently the intention of the Company to cover by a suspense account this freight upon which they had incurred the expense and upon which the earning had not returned to them, and that a rough estimate was made of this amount and that they then credited it to freight earnings in this rough way and got rid of it finally by an adjustment of their freight earnings account at the end of the year; but this purpose was flatly abandoned in the year 1884 and this method of increasing the freight earnings through this unbilled freight account was adopted. Whether or not the $276 000 was as I have said set up in good faith to take care of this, you might call it freight in transit, interline settlements or not, I don't know, and I have no evidence in the books nor have I come across any, to show that that $276,000 was used in the manner that the $543,100 and subsequent entries were.

I am therefore not criticising beyond the passing entry.

Q. But you have followed these items into the cost of construction?

A. Yes, sir.

In the next year, which is 1885-6, the additions to the road were $1,599,410.02 according to the Company's books. There was a deduction from the cost of road on account of bonds redeemed of $100,000. There was a debit to equipment, according to the Company's books, of $1.808. Of the $1,599,410.02, the freight earning, unbilled freight account, was again manipulated to add $801,000 to the cost of road and equipment.

Q. In the same way that you have explained as to the prior years?

A. In the same way that I have explained heretofore.

The cost, as per the Company's books, to June 30, 1886, was then $46,990,680.35; to equipment $5,139,718. In the next year, 1886-7, the additions to the road were, according to the Company's books $10,330,182.98; to equipment $727,792.18. There was a deduction from the cost of road on account of an error in the charge from the Minneapolis & Northwestern road of $576.06 on the Company's books, and equipment, of $34,750.

Q. That was deduction from equipment?

A. Deduction; yes, sir. There was also deducted from the cost of the road on the Company's books $259,000 for bonds redeemed.

Q. Out of land sales?

A. From land sales; yes, sir. In column No. 3 I have placed, as an item of excess cost, $1,032,500 discount on bonds which had been prorated into the cost of the various branches built during the year, and which amount is included in the $10,330,-182.98 mentioned as additions to the road. Included in this there is also $748,000 of cost manipulated through freight earnings and unbilled freight, as heretofore mentioned. There is another item of $500 000 now debited to material, road depart-

ment, and credited to fund for renewals, being the increase in the inventory over the book value; they, at this time, had the amount of material on hand in the road department re-inventoried and found that it exceeded the book value by some amount which they state was $500,000. As we have seen in the prior years, from time to time this road department had been credited with $15 a ton as the value of certain "steel rail laid over iron," which naturally would, through its credit, reduce the amount on the books chargeable to the road department. When they came to inventory this, naturally the amount of supplies on hand would be in excess of the book value.

Q. That is, the cost?

A. Yes, sir; therefore, in this entry correcting that, $500,000 was added to material on hand and this sum was carried over into a fund for renewals. Now, as we have allowed in the cost of the road anything which inured from this fund for renewals (and a large portion of it would be drawn from the storekeeper's or the material account of the road department) we are entitled, in view of the fact of this arbitrary charge of $15 per ton, to strike this whole $500,000 out of the cost of the road and equipment and consider it an item of excess cost—which I have done.

Q. There seems no other way to account, according to the books, for the excess in the value of the supplies on hand over their cost, except through this arbitrary credit of $15 per ton, that you know of?

A. No, sir; not to that large amount. As a usual thing, in handling material accounts, they will not inventory up to their book value; there always seems to be leakages of one sort and another, and, as a usual thing, they do not inventory, and it is the custom (and an approved custom,) for those shortages, when the inventory of material is made up, to be charged out to operating expenses or to construction, as a general thing prorating them according to the amount expended on each class of expenditure.

The next year, 1887-8, there were $8,335,875.96 debited to cost of the road on the Company's books, and $1,464,377.59 debited to equipment. There was a credit to equipment on account of Montana Central road and sundry bills of $56,600. This, according to the Company's books, has been deducted from the cost of the equipment. There were sundry credit items, three small items ($25,901.24 $18,048.22 and $9,938.81) on account of deductions for various reasons from the cost of road and equipment, which were deducted by the Company from the cost and have been entered here. There was also on account of mortgage bonds redeemed, an amount of $300,000 deducted from cost of road and equipment on the Company's books.

Turning now to column No. 3, I have placed in the excess cost $840,000 discount on the Montana extension bonds; $255,000 discount on St. Paul, Minneapolis & Manitoba consols and $335,000 I have placed in the excess column on account of the credit to freight earnings and the debit to unbilled freight, the same as in prior years.

Q. Now, let me go back just a moment before we leave the subject. You mentioned, a moment ago, an item appearing in column 3, of $432,820 and another item for $115,840 which were, as you stated, arbitrary charges to depreciation of equipment, which were subsequently apparently deducted by the Company itself from the alleged cost of equipment for that year, and only the balance remaining after such deduction reported in the annual report of the Company for that year to the State; in the reports made to the State by the Company in the years where that class of items appears upon the books, were these arbitrary charges to depreciation reported and charged back? In other words, did the report made to the State correspond with the Company's books in those years?

A. The net amount, yes, sir; but there was no depreciation reported at that time to the State. I would say here that with

reference to the matter of depreciation the depreciation is mentioned on these journal vouchers, but you cannot increase the cost of your equipment by depreciation account, as you can readily see; that while it is mentioned there as a depreciation account of equipment and that term is applied to it on the face of the journal voucher, yet you can readily see from the most casual inspection that the cost of your equipment cannot be first raised by a depreciation account and then that depreciation account wiped out by charging it to the cost of road and equipment. So that, when you speak of it as a depreciation account, I do not consider it necessary to even mention the fact that this word "depreciation" appeared on the voucher, as it is so manifestly an error to increase the cost of your equipment by depreciation before removing it for other purposes.

Q. Now. you may proceed.

A. In the next year, 1888-9, we have additions during the year, to the road to the amount of $1,828,027.07; to equipment of $434,106.57. We then have a further debit to cost of road and equipment of $3,309,000 on account of bonds redeemed. Heretofore the Company has deducted from its cost of road and equipment in the various years certain sums for these bonds redeemed from the proceeds of land. They now re-add the entire amount $3,309,000 to the cost of road and equipment. I have summed up these various items which I have mentioned in passing, from the year 1880 down to this point, and they amount to $3,309,000. This amount is now charged back to the cost of the road.

Q. But it appears on the books that it is charged back on account of bonds redeemed?

A. Yes, sir.

Q. By the land sales?

A. Yes sir.

Q. And which had theretofore been deducted as they were redeemed?

A. Which had been heretofore deducted from the estate. I have placed this amount in the excess cost.

Q. Now, then, one of your reasons for placing that in the column of excess cost arises from the fact that these lands out of which this money arose were capitalized at the time of the purchase of the property by the Manitoba Company, and were included in the cost price to that company, it was a part of the estate that they purchased?

A. Yes, sir; and any sale of land would depreciate the value of the estate and should be a deduction from the cost of the estate, which is represented here by the cost of the road as distinct from the rolling-stock which is called equipment, and, heretofore the Company has been making these deductions year by year from that cost. They now add them in. They now commence to separate what you might call "additions" from "additions and improvements"; it is a little refinement of accounting; but the additions and improvements are part of the increased cost of the road, and one might be considered to represent the addition of extra mileage and the other the improvement of what mileage they have on hand.

Q. So that they carry two items—additions, and additions and improvements?

A. Yes, sir. Various items for additions would be under the construction heading and be understood to be new lines. The amount is $670,940.60. Another small item of $505.09, a deduction from the cost of the road on account of various bills rendered of $3,796.36. All of these items show in the Company's books.

We now come to the item that I have already stated that we placed in the excess column, this $3,309 000, on account of bonds which had previously been redeemed through the proceeds of land sales and have now been added again to the cost of the road. The item immediately preceding that, $382,009.30, is unbilled freight charges again. At this point, the Manitoba

road was leased as an operating proposition to the Great Northern Railway. As they closed their books they had an account of unbilled freight which now, as the new company had taken possession, they had no means to get rid of. It was an asset without any place to bill it or without any place to put it where it could be made available. In order to get rid of the charge which had month by month been made to unbilled freight and credited to freight earnings, they now raise an account on their books called "St. Paul, Minneapolis & Manitoba land contracts No. 1," and credit unbilled freight with the amount with which it had previously been charged, $382,009.30, and debit it to St. Paul, Minneapolis & Manitoba land contracts No. 1. In other words, part of their contracts for the sales of land for the unpaid portions of land sales, were laid aside (supposed to be laid aside) to take care of the unbilled freight charges which had been credited to freight earnings. This use of this account as we all know that no freight charges could accrue on land contracts by any possibility,) justifies the treatment which I have given and the criticism which I have made as to the disposition of this unbilled freight account in prior years. I have placed in the excess column this $382,009.30.

Q. Which is a part of the item of $1,828,027.07 said to have been expended that year in additions? It is included in it?

A. No, sir; that is not included in that.

Q. Well, where is it included?

A. It is simply that of the amount of the cost of the road up to this date $382,009.30 was taken out and made a special account in order to meet this unbilled freight item.

Q. Is it included anywhere in the cost of the road?

A. Yes, sir, it is a part of the estate, the original land-grant which has had the expenses charged to it heretofore and is now segregated into a special account and, without giving any credit to the cost of road on hand, is now made a separate account instead of going into the reductions on account of land being sold and depleting the estate by the sale of those lands.

Q. The $382,009.30, then, is the balance remaining in that unbilled freight account—

A. Yes, sir.

Q. At the time the Manitoba was turned over to the Great Northern?

A. Yes, sir. Which they get rid of by creating this land contract account No. 1. That is an arbitrary entry, absolutely.

The next item is $191,268.37, discount.

Q. On what?

A. On bonds. This came to an adjustment of account along here, and that item includes several items of credits and debits to discount, and is a net amount, but is shown by the books of the Company.

The next item, $13,414,801.24 is simply a footing. These accounts were made out by me upon sheets of a different length from this one, and where I carried forward from one to the other the stenographer has carried forward the total, so you will kindly draw a pen through that $13,414,801.24 as it is merely a total of preceding items.

Q. In that column?

A. Yes, sir.

The next year, 1889-1890, there are very small amounts charged to the road and to equipment. The Great Northern Railway assumed control here, and the improvements which were under way at the time were, to a large extent, carried upon the Great Northern books.

Q. And will appear when you come to a discussion of the Great Northern?

A. Yes, sir.

During the next year, 1890-1891 additions and improvements were made to the amount of $486,359.03 to the road, nothing to equipment. Included in these improvements was an item of $43,880 discount on bonds.

Q. Was that a discount on bonds issued that year?

A. Yes, sir.

Q. It is true, is it not, that after the Great Northern took over the Manitoba under this 999-year lease, all bonds subsequently issued by the Manitoba Company were sold to the Great Northern?

A. I don't know about that. I know that part of the contract with the Great Northern road was that extension should be paid for in bonds at $15,000 per mile, and for second, third and fourth tracks at $12,000 per mile, and that was carried out for a short time and then seems to have fallen into disuse, the Great Northern charging the Manitoba road for the cost of its extensions as they made them and not carrying out this contract of the $15,000 and the $$12,000 after a short period. I suppose, of course, that the mutual boards of the companies confirmed this item and it was strictly in accordance with the provisions of the contract, either as withdrawn or as amended, but I did not go into that to look it up.

Q. We can introduce that contract if it becomes necessary.

A. Yes. I would say that this item of $486,359.03 charged to the Manitoba road came back from the Great Northern's books and was charged to the Manitoba, they charging back year by year the additions and improvements—sometimes all together, sometimes only in part, but each year charging back something to the Manitoba road.

The next year, 1891-2, there is a charge to the cost of road of $817,000 on the Wadena & Park Rapids road, the Great Northern having completed 54.574 miles, at $15,000 a mile, paid for in consols.

Q. In bonds?

A. Yes, sir; consolidated mortgages.

Q. Well, you mean by that in the consolidated mortgage bonds of the Manitoba Company issued to the Great Northern?

A. Yes, sir. And whatever excess cost is in this and some subsequent items will now be discussed when we come to the discussion of the Great Northern accounts.

The next item is 10.381 miles, from Alton to Halstead, paid again in bonds at $15,000 per mile.

Q. Bonds of the Manitoba?

A. Bonds of the Manitoba handed to the Great Northern road. The excess cost on this will be discussed in the Great Northern statement.

We now commence to redeem the consolidated bonds through the sinking fund, and they (I mean by "they" the Manitoba road) have deducted from the cost of the road $26,000 on account of payment to sinking fund (that is, bonds redeemed) through land sales. In 1898 they charge this and two other amounts which accrue in the following years back again to the cost of road and equipment. They here again recognize the theory that a bond redeemed from land sales should be credited to the cost of road and equipment and commenced to keep the books on that basis.

Q. They only recognized it for a while, though, because you say they charged it back again?

A. In 1898, yes, sir.

The next year 1892-3, $265,755, payable in consolidated bonds at $15,000 a mile, on account of the St. Hilaire to Thief River Falls. I have mentioned the mileage over here to the right of the different items going to make this amount up.

The next item is second and third and fourth tracks in Minneapolis, paid for at the rate of $12,000 per mile, as per contract, paid in bonds. The mileage not always breaking even, a little adjustment is necessary from time to time, and the next item of $957,000 charged to cost of road, is on account of the fractions of accumulated bonds. If you will allow for the moment, I will omit the next two items here, $14,000,000 each and come back to them in a moment.

The next item is a discount on four and one-half consolidated bonds, charged into cost of road and equipment, $71,061.95. You will note here that at this point the contract with the Great

Northern road of $15,000 a mile seems to have slipped and that this—

Q. Been abandoned, you mean?

A. Abandoned or slipped; not abandoned, because there is an entry later on where some of the road is paid for in $15,000 a mile, and that is the reason I use the word "slipped" instead of "abandoned" as the matter comes up again of $15,000. I didn't go into any of the details as to why or whether this amount was handled under a special contract or not. I would say, however, that at this point the amount of interest payable on the consols seems to have been lessened to four and one-half per cent, and perhaps in view of that, whenever any items were issued which would be paid for by the four and one-half consols the agreement with the Great Northern road did not hold. That is only a casual comment, and I have not made any investigations as to whether that is correct or not.

Q. The consolidated mortgage provided that part of the bonds were six and part four and one-half; there are two classes of bonds. These are the four and one-half?

A. Yes, sir. The amount of discount I have placed in the excess column, as heretofore. The additions and improvements that year were $1,609,523.78; the new equipment, $72,854.95. Again, there was a deduction made from cost of road account of $26,000 on account of bonds redeemed from the proceeds of land sales. These are part of what is charged back to the cost of road again in 1898.

I now return to the two items of the Pacific Junction to Spokane and from Spokane west. This is the Manitoba road being built to the Coast. These two items, $14,545,454.54 in one case, and $14,545,454.55 in the next item, are the par of $3,000,000 pounds sterling bonds, issued for this purpose to the Great Northern road.

Q. By the Manitoba?

A. By the Manitoba. They were all charged to construction

at their full par value and they were all charged to construction during this year.

Q. Before the construction was begun?

A. Before the construction was completed; it had already been begun. You will note that of the second issue only 2,950,000 pounds sterling were delivered to the Great Northern road; the other 50,000 pounds sterling being held until November, 1901, when they were issued to pay for certain extra track at Spokane and Everett, the amount at which they were carried on the Company's books and were carried in a trustee account being $242,424.24, although the entire amount par of these bonds was carried into the cost of the road. The second issue, from Spokane west, of these bonds was never made; in lieu of them, there was issued a Great Northern collateral trust mortgage for $15,000,000. I will come to this point a little later in the discussion, but I wish to call attention to it here right at this point—

Q. They were charged up, but not issued, you mean?

A. They were issued, but I meant by that they were never issued to the public.

Q. Oh.

A. The Great Northern took these bonds and put them in trust and issued its own collateral trust bonds at par of $15,000,000 for these bonds.

Q. These were used as collateral?

A. These were used as collateral for the other mortgage. That will appear later on. But the entire amount of these bonds was, during this year, charged to the cost of road and equipment. And, right here, through the fact of this charge arose a rather peculiar state of affairs: from this point down to the time that the Manitoba road ceased its existence, the reports to the State have not in any year agreed with the books of the Company. There is in the report to the State an arbitrary increase of the amount of equipment to the extent of $1,270,000.

which $1,270,000 has been, in the report to the State, deducted from the total cost of the road as shown upon the Company's books. This error continues down to the close of the Manitoba books and the Manitoba books were closed on the basis as shown in my blue-print here in the second period.

Q. June 30, 1907?

A. Yes, sir. When the Great Northern books were opened, they apparently were opened upon the basis of the cost which was shown in the report to the State; that is, a very large increase (of $1,300,000) in the cost of equipment and a corresponding decrease in the cost of the road.

Q. The gross item of the sum of the two was the same?

A. Yes, sir.

Q. The item of equipment in the equipment column was under the head of "Equipment" in the books, and under the head of "Road" in the report to the State?

A. Yes, sir. I don't know whether it is necessary or not, I thought some questions might be asked and I brought the report for 1903 from the state capitol with me, but it is hardly necessary to go into the matter more than to say that there is an item on page 29 of this report which shows "Road Built by Contract, $28,126,801.09." This represents the first, second, third, fourth and fifth items expended during this year according to the blue-print.

Mr. DURMENT: What year is that?

WITNESS: 1892-3. Adding these accounts together, we will note that they amount to just $1,270,000 more than the item quoted in the annual report to the State. If we then refer to the annual report to the State in the next division, we will see that the books of the Company show $72,854.95 as expended for equipment and that the report to the State shows $1,342,854.95 as expended for equipment, which is just the same difference which existed in the prior accounts. This error is perpetuated, as I stated, to the end of the Manitoba system.

In the next year, 1893-4 we have the account of improvements at Great Falls, (I see it is marked "Imports to Great Falls"; it is improvements at Great Falls,) $189,000. As heretofore, any excess of cost which occurs in these items which are transferred from the Great Northern books will be discussed in the period which contains their accounts. They are taken up at full value on the Manitoba books. The line from Addison west was $177,300, was 11.78 miles, paid in bonds at $15,000 a mile, to the Great Northern road. The next, additions, improvements and additions to equipment, were transferred from the Great Northern books to the Manitoba books and are entered here as shown. The next item is $21,000 consols in the sinking fund, again deducted by the Company from the cost of road and equipment and charged back to cost in 1898. During the next year, 1895-6, the additions and improvements show $364,873.01; the Casselton to Ripon cut-off shows $17,703.56, and the additions to equipment show $53,423.43. These were paid for by $436,000 consols owned. It it noted here that the resolution of the board of directors on April 15, 1893, provided that bonds can be reissued and so used when redeemed by land sales through the first mortgage. In other words, when first mortgage bonds have been redeemed by land sales, the Company can issue consolidated bonds to a like amount and sell them and put the proceeds into the cost of road and equipment. That is one of the provisions, I believe, of the consolidated mortgage.

During the next year, 1896-7, there was a credit to cost of road and equipment, on account of the balance of bonds due, where these small amounts of bonds accrue and are gradually taken in and out of $35. There was a charge of $483,450 on account of 32.23 miles, which was paid in bonds issued to the Great Northern road, $15,000 a mile.

Q. And was the road from Halstead to—?

A. Halstead to Cavanau. And the next item was the road from Hope to Anita, 28.07 miles, paid in bonds, $15,000 a mile,

issued to the Great Northern road, the amount being $421,050.

The next item was land at Great Falls. This was bought from the Great Falls Water Power Company, $102,000.

And the next was an item, cost of land,—I did not look to see where this land was whether it was at Great Falls or other points along the road—but allowed this charge to the cost of the road and equipment, as I also did of the land at Great Falls.

During the next year, 1897-8, there was added to the road on account of balance from bonds, $100; from Langdon to Helena and from Cavalier to Walhalla $544,000 on account of mileage, paid for in bonds to the Great Northern at $15,000 a mile; additions and improvements, amounting to $902,446.45, and to equipment $51,783.49. There was a deduction on account of an overpayment to the Great Northern Railway of $3,394.94; also an addition to the cost of road of $73,000 on account of consols previously canceled in 1892, 1893 and 1894. This item I have placed in the excess column as a cost which should not be allowed.

Q. Those bonds having been redeemed out of land sales?

A. Yes, sir.

The next item is balance again to take up the fractions of bonds of $366.65. The next is Spring Park Extension, $123,000, 8.22 miles, paid for in bonds at $15,000 a mile. The next items, Tunis to Portage, Verona to Teton, and Teton to Tunis, three items which were classed as additions and improvements and transferred to the Manitoba books from the Great Northern Railway Company's accounts and have been accepted in full and charged to the cost of road and equipment.

The next item is an adjustment of equipment, coming also from the Great Northern books, whereby the cost of road is credited with $50,927.87, and the same amount is added to the cost of equipment for that year, bringing the total of equipment up to $89,904.52. It sometimes happens that in these accounts some of the equipment gets paid for and creeps into the cost of

road and an adjustment is made afterwards and this is one of the cases.

Q. That item was simply credited to the road and charged to equipment?

A. Yes, sir.

In the year 1901-2 there is another adjustment of the balance of bonds of $513, and then additions and improvements to the amount of $5,516,196.13, and to equipment of $437,740.90. These were transferred from the Great Northern account and the excess, if any, would be treated in our discussion of their accounts.

Q. It will be unnecessary, it seems to me, to read these items from the exhibit where there is no controversy about them.

A. How is that?

Q. It is unnecessary to read these items as to which there is no controversy. If there is any one you want to comment on call attention to it.

A. The next item that requires comment is in the year 1904-5, additions and improvements. The cost of road and equipment is credited by the material taken up from the Hutchinson line $97,596.20, but before this credit was made, a similar entry was made charging the cost of road and equipment with this same amount, and I have therefore entered this item as an item of excess cost. This item I will say may be susceptible of explanation, and it may be that in assuming that when the amount was charged to the cost of road that there really was an expenditure of that amount on this road, but the books of the Company do not show it. It shows that, first, the amount of material which was taken out of the track and was credited to the cost of road and equipment was first charged into cost of road and equipment before it was taken out. It may be that there is an item in there which would offset that amount, as it seems if it were not that it must be an error which has been overlooked in their accounts, as heretofore their accounts have

not been kept in a manner which would indicate any such duplication of charges to the cost of road and it may be that that is susceptible of explanation.

Q. There is a difference of $5?

A. Well, that was a small construction item of $5 in there; that is in anyhow, regardless of this $97,596. This completes the discussion of the second period of the St. Paul, Minneapolis & Manitoba road, and shows that, according to the Company's books, this road cost $120,970,354.41, and that the equipment cost $8 426,310.89, and that the excess cost was $13,700,339.39.

Q. That is during the second period?

A. During the second period; yes, sir.

Q. That item does not purport to include any excess cost during the first period as shown on Ex. K-1?

A. No, sir.

Adjourned until Saturday January 15th, at 10 a. m.

Federal Building, St. Paul, Minn., Saturday, January 15, 1910, the hearing was resumed at 10 A. M.

CONWAY W. HILLMAN,

recalled on behalf of Defendants, testified:

By Attorney General YOUNG:

Q. Now, calling your attention to Ex. K-3, which relates to the third period into which you have divided the history of the road, you may proceed to explain the contents of Ex. K-3 to the Court.

A. Ex. K-3 is the third period the Willmar & Sioux Falls Railway. The books were opened in 1888 with the value of the road expressed by the par of its stocks and bonds. There were $2,625,000 of bonds and $1,500,000 of stock. Included in the cost of the stocks and bonds on the St. Paul, Minneapolis &

Manitoba Railway Company was a certain amount of discount. Instead of having the cost of the Willmar & Sioux Falls road on the St. Paul, Minneapolis & Manitoba books, it was carried in their investment account—the Willmar & Sioux Falls stock and Willmar & Sioux Falls bonds. There was, on the collateral loan which was issued just about this time by the St. Paul, Minneapolis & Manitoba road (par value $8,000,000) $2,003,389.55 of discount on those bonds. This discount was taken up by apportioning a certain percentage to each of the following properties: the Northern Steamship Company stock, the Duluth, Watertown & Pacific bonds, the Duluth, Watertown & Pacific stock, the Willmar & Sioux Falls bonds and the Willmar & Sioux Falls stock. The amount which had been charged by the Manitoba road to the Willmar & Sioux Falls bonds fell short of the par of the bonds by $549,934.93. This amount was added on the books of the Manitoba Company to the cost of these bonds, which made them par. This left of the amount of discount on these collateral trust loans which had accrued $666,092.59, for the Willmar & Sioux Falls stock, which was then taken up on the books of the Manitoba company as the value of this stock, so that about $550,000 of the bonds and the entire value of the stock on the books of the Manitoba company were represented by the discount on the collateral loan. I would say that I have, in this account, allowed as a legitimate charge to all these items, their proportionate amount of the expenses which were incurred in making the mortgage registering the mortgage and issuing the stock and registering the stock. Therefore, I have taken and put in the excess column, on this third-period statement, Willmar & Sioux Falls road, the sum total of this discount which was charged in to make the bonds par and to give the book value of the stock, which amounts to $1,216,027.52. The value of the stock, as shown by the Manitoba books, was $668,724.27, which is the item I have just mentioned of discount, plus the expenses; the stock being taken up in the

cost of the Willmar & Sioux Falls road at par, $1,500 000, I have deducted the $668,724.27, the book value of the Willmar & Sioux Falls on the St. Paul, Minneapolis & Manitoba books from the $1,500,000 par of the stock and have entered that, also, in the second item as an excess cost.

Q. Now, in order that we may get this matter of the discount on the so-called collateral trust mortgage intelligibly into the record, I want to ask you about that mortgage. The Willmar & Sioux Falls Railway Company was a company that constructed the road from Willmar southwesterly to Sioux Falls, in South Dakota, was it not?

A. It was the company which represented that construction.

Q. The construction was undertaken just before the formation of the Great Northern Company and while the main line passing through Willmar to the west and northwest was still owned and operated by the St. Paul, Minneapolis & Manitoba?

A. Yes, sir.

Q. The collateral trust mortgage that you refer to upon which this discount accrued that is charged up against the Willmar & Sioux Falls, the Northern Steamship, and the Duluth, Watertown & Pacific, was a mortgage given on or about August 1, 1888, by the St. Paul, Minneapolis & Manitoba Company, secured upon certain stocks and bonds in its treasury, and not secured upon the property of the road?

A. That is right.

Q. The bonds secured by that mortgage were not disposed of in the market as railroad bonds usually are, but were disposed of to stockholders of the Manitoba Company at about 75 per cent of their face, isn't that true?

A. Yes, sir. I have not followed that more than to look in the general records such as would be furnished by Poore's Manual, that they were offered to the stockholders.

Q. Well, the reports to the State, I think, show that. The par value of the collateral trust mortgage was $8,000,000, and

the total discount upon it that you have referred to was how much?

A. $2,003,389.55.

Q. A trifle less than 25 per cent discount. Now, then, it was the discount which arose out of that transaction on the part of the Manitoba company with its stockholders that was charged over against the securities issued by the Willmar & Sioux Falls road, the Duluth, Watertown & Pacific and the Northern Steamship Company?

A. Yes, sir.

Q. And in order to further explain your statement as to the manner in which it was charged, I desire to ask you at this time (which is perhaps a little premature, but as it is necessary in order to elucidate this question I will ask it now), the books of the Manitoba company show, do they not, that the Willmar & Sioux Falls road, which was constructed in consideration of the securities that you mentioned a moment ago, was entirely constructed for less than the amount of the bonds?

A. Yes, sir.

Q. And that the bonds and stocks (the stock amounting to $1,500,000) were entered upon the Manitoba books, were they not, as an investment?

A. Yes, sir.

Q. And construction charged against them. Now, the Willmar & Sioux Falls, constructed for less than the amount of the bonds, there was a portion of this discount on the collateral trust mortgage deal carried forward and charged against the bonds of the Willmar & Sioux Falls road, so as to make them appear to have cost par?

A. Yes, sir; so as to bring their price on the books at par.

Q. And that amount you say was—

A. $549,934.93.

Q. And that amount that you have just now mentioned represents the amount of the bonds of the Willmar & Sioux Falls

road in excess of the cost of the construction of the road?

A. Yes, sir.

Q. And after deducting this sum that you have just mentioned, which was charged against the bonds of the Willmar & Sioux Falls, the remainder of the amount apportioned to that road was charged against the stock of that company?

A. The remaining amount of this discount; yes, sir.

Q. And that is the only value that the stock of that company had, the ostensible—

A. No, sir; there was an item which I have allowed in the value of that stock, which, as I said, was its proportion of the expenses of making up the stocks and the bonds, and also the expenses of the collateral loan which gave it a book value in addition to the discount of $2,631.68.

Q. Well, outside of that amount which refers to the cost of the issue of the stock, the only value which that stock had, according to the books of the company, was this arbitrary discount charged against it on the books?

A. Yes, sir.

Q. And the remainder of that discount or so-called discount, on the collateral trust bonds, will be explained with reference to the stock of the Northern Steamship Company and the Duluth, Watertown & Pacific, or can you state it now?

A. Right here, I would say that in this item, when I turn over this page to look at it, I find that there is one item that I have omitted, and I will call attention to it later on, I will not cumber the record with it here; in my computation of the excess expenses I will call attention to it later on.

Q. Now, you may proceed with the other items on that exhibit wherein you found any item of excess cost.

A. The first item I would call attention to is the item in 1890-1891, of $184,304.96 charged to the cost of road and would merely state that this includes an adjustment of interest on bonds, $170,625, which accrued during the construc-

tion of the road. This was the interest on the full par of these bonds, $2,625,000. I don't mean that was the full amount of the interest but that was the calculation of the amount of interest which accrued during construction, usually based upon the full par value of the bonds. I have made no deduction from the cost of the road and equipment on that account.

Q. It is true, is it not, that the Willmar & Sioux Falls Company was a subsidiary company and that all of its stocks and bonds were issued to the Manitoba Company?

A. Yes, sir.

Q. It had no other outstanding stocks or bonds.

A. The next item is in the year 1893-4; there was an amount charged to the cost of road at that time of $1,063,178.22. The actual cost of this work, which we obtained from the construction books was $1,007,228.22. I have therefore considered the difference between the actual cost of construction and the amount charged in the books as an excess and have so entered it.

The next item which requires notice is the acquisition of the Sioux City & Northern road in 1900. This road was purchased from the Sioux City & Northern company and I was unable to determine, not having the books, as to the absolute cost of that road, and have entered the amount as found upon the Company's books. This Sioux City & Northern passed through several hands in reaching them, and I have merely made the notation that from the indications, as far as I could get of the subsidiary companies from reports, that the cost of construction is covered by the bonds, plus the $20,371.12 improvements, but I have made no deduction from the cost of the road on this account.

Q. You were not sure of the result?

A. I was not sure of the result; no, sir.

Q. Where is the Sioux City & Northern located?

A. I can't give you the location, sir; I don't know.

Q. It is one of the little branch roads purchased by the Willmar & Sioux Falls?

A. Yes, 96 miles long. I didn't seize the opportunity to locate it or say where it was. I couldn't say without reference to the map.

Q. It is in the region lying between Sioux Falls and Sioux City?

A. Yes, sir.

The next item that requires attention is in 1901-2, the acquisition of the Sioux Falls Terminal road for $496,896.58. I have that marked an excessive price for three and one-half miles. There were seven miles of that road, and the reason that I had three and one-half in there was that it only added three and one-half miles to the mileage, as the Great Northern were already operating the balance of the road under a contract, and it showed up on their mileage as contract operation, and I had overlooked that matter. I do not know the cost of this road. It also passed through various sales and various reorganizations and I have allowed the full amount of the purchase price paid by the Willmar & Sioux Falls for this property. There are no other items on this statement which require comment, and I would say that the total cost as shown by the Company's books for the road was $9,135,042.11. The cost of equipment as shown by the Company's books was $359,527.61, a total of the items which I have placed in the excess column of $2,103,253.25.

Mr. DURMENT: Mr. Hillman, I notice the last item under the head of equipment on the third period is a deduction of $28,896.96, on the Company's books; what is the explanation of the deduction?

WITNESS: It was an adjustment of the equipment which they had acquired prior to this date. They found that the equipment account had been overcharged. They found this either by inventory or by examination of prior records on their books and therefore they deducted from the amount of equipment $28,896.96. It is a deduction on the Willmar & Sioux Falls Railway books.

Q. Now, before leaving this exhibit, inasmuch as you have referred in your testimony to these collateral trust bonds that were issued by the Manitoba company to the stockholders at a large discount, let me ask you whether or not the books do not show that those bonds were taken up and paid for at par at the time of the formation of the Great Northern in 1899.

A. Yes, sir.

Q. Accepted at par in payment for Great Northern stock?

A. Yes, sir; they were allowed to be turned in by the stockholders as part of their subscription of $10,000,000 cash to the stock of the Great Northern Company.

Q. So that, as a matter of fact, the discount was really a fictitious item, after the redemption of these bonds at par by the Great Northern Company? In other words, stock was issued, at the time of the formation of the Great Northern Company, for the total face amount of these bonds, and they were taken by the Great Northern Company in exchange for that stock at par, so that the bonds were in fact paid in full by stock of the Great Northern Company, within two years after they were issued?

A. Yes, sir; they were paid in full in cash practically, as the subscription called for, either cash or these bonds.

Q. I only asked that question to show that that discount was properly an excess item so far as it was claimed to be part of the cost of the road. Now, calling your attention to Ex. K-4, relating to the fourth period into which you have divided the history of the Company, in which period the distinctive feature seems to be the acquisition of the Eastern Railroad of Minnesota, you may explain this exhibit to the Court.

A. The Eastern Railroad of Minnesota was formed by the issuing of $5,000,000 stock and the authorized issue of $5,000,000 bonds. These bonds were issued as required for the payment of construction items. The Eastern Railroad of Minnesota obtained its title to a road called the Lake Superior &

Southwestern road, of which road no record in the reports to the Railroad Commission, or otherwise, exists. This railroad (Lake Superior & Southwestern) consisted of terminal properties at Duluth and Superior, including the elevators and the tracks which were necessary connecting these elevators (two of them) with the existing railroads. These elevators had been carried upon the Manitoba books as an investment up to a certain period very close to this change. At that time they were closed out and were charged to the Lake Superior & Southwestern Railroad Company (or Railway Company, I am not sure which it is.)

Q. Were these elevators constructed by the Manitoba Company?

A. Yes, sir.

Q. And at what time were they transferred to the Lake Superior Company, if you can tell?

A. The Lake Superior & Southwestern Railway first appears on the Manitoba books as an investment on June 30, 1886, for $57,657.79; the next year this had increased to $482,897.84, by the transfer to the Lake Superior Company of the Lake Superior elevator and the Great Northern elevator properties, $315,000 for the Lake Superior elevator, and $9,000 for the Great Northern elevator. The next, in 1888, June 30th, (of course) the amount charged to this account (the Lake Superior & Southwestern Railway Company) was $571,409.21. There were of course some other items of expenditure which had entered in here; evidently, at first, the Great Northern elevator in 1887 was not completed; in 1888 it was completed, and $100,000 had been added to the Lake Superior & Southwestern Railway Company's cost.

Q. There are no other items you say that appear upon the books of the Manitoba Company as entering into the cost of these properties up to that date?

A. No, sir.

Q. What became of that item as it appeared on the Manitoba books?

A. It was charged up to the Lake Superior & Southwestern Railway, and when that road ceased to exist, this amount was charged to the cost of the Eastern Railway of Minnesota stock in the investment account of the St. Paul, Minneapolis & Manitoba. The amount was a trifle over $559,000 charged because of that stock. The probabilities were this was reduced from $571,000 by whatever salvage was obtained by the reduction of tracks which would necessarily or probably come in when it was made a consolidated road and had a connection and became a road of itself. Anyway, this account was reduced $559,000 and was carried on the Manitoba books as the cost of the Eastern Railway of Minnesota stock.

Q. Now, then, when the stock of the Eastern Railway of Minnesota was issued and when its bonds were issued they were issued to the Manitoba Company, were they not?

A. Yes, sir.

Q. It was, strictly, a subsidiary company of the Manitoba system?

A. Yes, sir.

Q. And a subcorporation formed under the same charter as that under which the Great Northern was ultimately formed, the Minneapolis & St. Cloud, was it not?

A. Yes, sir.

Q. Now, with that explanation of the origin of the elevator property or terminal property there, you may go on and explain that first entry on this exhibit.

A. Included in the $7,445,389.38 cost of road, is an item of $4,432 090.79 (made of the journal voucher 28, June 30, 1889) which journal voucher reads, "Value of terminals acquired to the road in its business above amount cost." That is, that these terminals cost about $568,000, and that they were taken up in the valuation of the Eastern Railroad of Minnesota for the full $5,000,000.

Q. They were arbitrarily called worth this amount more than what was paid for them?

A. Yes, sir.

Q. Now, what do those terminal properties consist of?

A. They consisted of Lake Superior elevator, the Great Northern elevator, and the tracks and connections necessary to connect them with the then existing roads.

Q. They are the same two elevators that were, as you stated before, constructed by the Manitoba Company at a cost of something over $500,000?

A. Yes, sir.

Q. And you therefore carried that amount $4,432,090.79, into the third column of the exhibit as being an arbitrary valuation of those properties above what was paid for them and an item of excess cost of the road?

A. Yes, sir.

There was also included in these $7,445,389.38 $219,104.15 discount on securities. The report to the Railroad Commission gives this amount as $236,837.50; but I find from examination of the books that $17,000 of that amount reported to the Railroad Commission as being a discount was interest which accrued during construction, and I have therefore deducted this amount from the $236,000 as shown, and show $219,104.15 as the discount on the bonds.

Q. That item ostensibly represents a discount on the bonds of the Eastern Railway of Minnesota, at the time they were transferred to the Manitoba Company does it?

A. Yes, sir.

Q. You stated that this company, at its inception, had issued $5,000,000 worth of stock and $5,000,000 worth of bonds, par value; what was done with the remainder of the money according—

A. Well, I said, I believe, that these bonds were authorized, the $5,000,000 and were sold in order to provide the funds for

construction or to repay advances which the Manitoba Company had made for construction, and they were issued from time to time and not in a lump sum.

Q. Then you are not prepared to say that the bonds were issued to the Manitoba Company; they may have been put upon the market?

A. The first issue of bonds (I didn't follow it after that) were made to the Manitoba Company, at ninety cents on the dollar. I didn't follow the entries after that.

Q. It is at least true, is it not, that all of the stock of the Eastern Minnesota Company was issued to and was retained by the Manitoba Company up to the time it was absorbed by the Great Northern?

A. Yes, sir; always deducting the five shares necessary to qualify directors; but when a transfer is made and the stock is finally transferred, the full par value of the stock is taken over at $5,000,000.

Q. The Eastern Minnesota Railway consists of a road up in the northeastern part of the state, the nucleus or beginning of which was a logging road, was it not, and which has since expanded into the lines of the Manitoba system, in the mining region and across northern Minnesota?

A. Yes sir; but at this period that transaction had not taken place.

Q. The purchase of the logging company was made by the Eastern Minnesota later, was it?

A. Yes, sir; it came into their accounts later on. This was the road from Hinckley up through Superior to Duluth.

Q. Well, you may proceed with the explanations.

A. The next item is an investment which the Great Northern had of stock in the Lake Superior Terminal & Transfer Company, and the value at which this stock is carried on the books of the Eastern Railroad of Minnesota exceeded its cost by $8,200.

Q. Well, that is the reason you place that item in the excess cost?

A. Yes, sir; it was carried on the books at $15,700; the actual cost to the Eastern Railroad of Minnesota being $7,500, not having any place where I was handling these securities of the Eastern Railroad of Minnesota, I put the $8,200 in here. When the Eastern Railroad of Minnesota charged over its elevators to the Lake Superior & Southwestern Railroad Company, they charged $9,000 for the Great Northern Elevator Co. (it is marked here G. W., it should be G. N. on the blue-print); only $10 was expended in the purchase of this stock, which was carried on the Eastern Railroad of Minnesota books at $9,000, and therefore $8,990 has been put in the excess cost column.

Q. It was a nominal sum paid for the purpose of acquiring that stock, ($10), you say, for the whole block of stock?

A. Yes, sir; and this amount of $9,000 was charged into the cost of the Lake Superior Company, which was eventually absorbed into the cost of the Eastern Railroad of Minnesota, as we have mentioned.

The next item that requires attention is discount and interest in the year ended June 30, 1891. The amount of discount was $13,700; the balance of this account is the adjustment of the interest prior to the opening of the road, where they again adjusted the bond interest, charging back to the construction period the interest which had accrued upon bonds, $150 624.98, which I have not considered an excess item.

Q. That was on the bonds used for the purchase of those terminals?

A. No, sir; those terminals came in from the stock; it was on the bonds which were issued to pay for the construction of the road.

The next item is Deduct the Adjustment of Discount, in 1892. At this time, the bonds commenced to sell for a higher figure.

Q. Above par?

A. Above par; and the road has discounted these bonds and credited discount with the amount of the premium, on the bonds above the discount, if there were any on the bonds sold during that year; I have therefore put this in the excess column as a deduction from the excess cost.

Q. You have deducted it?

A. Yes, sir.

Q. It was deducted by the Company?

A. It was deducted by the Company, and, as I considered it a proper deduction, I have deducted it from the discount.

Q. In other words, as you had determined, in your opinion, discount should not be allowed, you have offset premium against discount?

A. Whenever that was taken into the cost of the road by them I have allowed it. In some cases, the premium on bonds has been taken into profit and loss; in that case, of course, I would not allow it as an offset against the discount of the bonds.

Q. In all cases, it would have been more proper, in your opinion, would it not, to have offset it against discounts?

A. Yes, sir; until the discounts were taken up, and then I would consider that it was a fair deal to consider it as a profit.

Q. You may proceed.

A. The next item is the cost of the Kettle River stock, in the year 1893, $33,587.41. There was no road acquired. The Kettle River had been built by the Eastern Railroad of Minnesota, and the cost included in the year 1888-1890.

Q. Additions?

A. Yes, sir. Why this stock was purchased, the reason for it, I do not know, but it was not, in my opinion, an item which would enter into the cost of the road, and I have, therefore, placed it in the excess column.

Q. In other words, the road had already paid for the construction of this line; it was a short spur to a quarry, was it not?

A. I don't know, sir. I didn't investigate its location.

Q. But whatever it was, they had paid for it at the time it was built?

A. Yes, sir.

Q. And therefore there was no justification for afterwards buying the stock of the company under whose name it was built?

A. I didn't consider there was any justification in adding it into the cost of road and equipment. They may have had very good reasons for the purchase of that stock.

Q. By adding it in under the head of Cost of Road it amounts to a duplication of the cost, because that cost had already been paid under the head of Additions to the Road; that is the faci, isn't it?

A. The fact is that the construction of road had already been paid for.

Q. In a former year?

A. Yes, sir.

The MASTER: At this amount?

WITNESS: No, sir; it amounted to a little over $36 000. The construction of the road is shown by their books; the Kettle River branch, a little over $36,000. When they constructed that road I didn't look into the details of the construction contract. I do not know what they received for it, but when they purchased the stock of the road, after paying for the construction of the road I deemed that this had no place in the cost of the road as shown here and that therefore it was an item for deduction.

Q. If it represented anything, payment for which was justifiable, it does not so appear on the books?

A. No, sir.

Then, in the next two years there was an adjustment on account of the Kettle River stock appeared on their books, both of which were deductions from the cost of the road, as shown on the Eastern Railroad of Minnesota's books, and, as I had

already put in the excess column as an excess the cost of the Kettle River stock, I allowed as an offset to that whatever adjustments had gone into their account for subsequent settlements, which explains the next two items.

The next item which requires notation is the discount on bonds in the year 1898. The Eastern Railroad of Minnesota had issued two series of bonds, one going to par, and afterward they issued some bonds which were at a less rate of interest, and, on those bonds there was a discount, which accounts for the fact which might otherwise seem peculiar, that at one time there was a premium on Eastern Railroad bonds and that now there was a discount on them. It was owing to a reduction by the Company of its interest rate which sent the new issue of bonds below par, and here they were taken up at a discount.

In the year 1899 there was a transfer of equipment from the cost of road to the cost of equipment, which was a readjustment of the amount and is perfectly legitimate. During this year, the Eastern Railroad of Minnesota purchased the Duluth, Mississippi River & Northern Railroad Company. They paid for this road and its equipment the amounts placed opposite in the first two columns, amounting to approximately $1,500,000. This Duluth, Mississippi River & Northern road had made very complete repo. o the State, showing the absolute cost of its construction year by year. The cost of this construction of the road amounted to $987,593.01. I have, therefore, considered that the balance of the price paid for this road was an excess cost, and find that the excess paid over the cost of the Duluth, Mississippi River & Northern, was $512,236.91, which I have added into the excess column. I would say, right here, that this was the road which carried the inception of the Lake Superior Company, and when this Duluth, Mississippi River & Northern was purchased, one of the considerations which was mentioned in its transfer was that the Duluth, Mississippi & Northern should transfer to the Eastern Railroad of Minnesota

all its railroad and appurtenances, rolling-stock and equipment; that one of the conditions of this transfer was that the outstanding bonds of the Company, amounting to $987,000, should be canceled. The result of that was to leave the stock of the Duluth, Mississippi & Northern intact and in the hands of its owners; it did not pass to the Eastern Railroad of Minnesota, though all its railroad property did. The result was to leave whatever other property this Duluth, Mississippi & Northern held in the possession of the stockholders of that company.

Q. That would include all of its lands not used for railroad purposes?

A. Yes, sir. I mention this here because at that time a transaction took place on the Eastern Railroad of Minnesota books which hinges, or this hinges on that (or that hinges on this, whichever way we put it, the two are connected together) and that was that at this time the Eastern Railroad of Minnesota transferred to profit and loss (by journal voucher 35, June 30, 1900,) $370,001. The notation was that this was transferred to the Lake Superior Company which is the ore company. No credit or no entry is made beyond this on the Eastern Railroad of Minnesota books to show that they acquired any property or any rights for this transfer of securities. The securities were the Northern Land Company stock, par value $150,000, book value, $1; the Northern Land Company's bonds, par and value, $50,000, and an open account against the Great Northern Railway Company of $320,000. We know, from testimony taken before the legislative committee, that the inception of the ore lands was from the purchase of properties from Wright and Davis, Wright and Davis being the owners of this Duluth, Mississippi & Northern; that the starting price was in the neighborhood of $300,000. It is evident, as these securities were transferred from the Eastern Railroad of Minnesota to profit and loss and that afterwards the securities themselves the Northern Land Company's stock and the Northern Land Com-

pany's bonds, shown in the assets of the Lake Superior Company, that the transfer was made for the purchase of these lands. While we are on this subject, I would say that in journal voucher 5, May 31, 1902, it is shown that a further debit to profit and loss was made on the Eastern Railroad of Minnesota Company's books, without any entry on those books showing any profit to accrue to the stockholders from the transaction, of $2,636,960, which consisted of the Park Rapids & Leech Lake Company's bonds, book value and par value of $500,000; of the Park Rapids and Leech Lake Company's stock, par value and book value of $500,000; the Duluth Superior & Western terminal bonds, par value and book value of $500,000, and the Duluth & Superior Bridge Company stock, par value and book value of $1,136,960. At this time, according to the testimony before the legislative committee, there was a further payment made upon ore lands of $2,250,000. All these securities show up in the statement of the assets of the Lake Superior Company, showing that these properties finally found their way into that company. The entry states that these securities were transferred to the Great Northern Railway Company—the journal entry.

Q. That appears on the books of the Eastern?

A. The books of the Eastern; yes, sir. The effect of this is, that, without any credit as far as we can trace, in the Eastern Railroad of Minnesota books, $3,006,961 was debited to the profit and loss of that company.

Q. You may proceed.

A. There are no further items upon this Eastern Railroad of Minnesota statement of the fourth period which require comment.

Q. You have no knowledge of the value of the assets of the Lake Superior Company, Limited, acquired by this transaction that you refer to?

A. No, sir; I examined these transactions only insofar as

they touched the Eastern Railroad of Minnesota. The total cost of the Eastern Railroad of Minnesota, according to their books, as of June 30, 1907, is $23,688,142.89; equipment, $7,217,168.70. The amount which I placed in the excess column is $5,268,507.32.

Q. Which, in your opinion, should be deducted?

A. Yes, sir.

Q. Calling your attention now, Mr. Hillman, to Ex. K-5, which deals especially with the Duluth, Watertown & Pacific Railroad, that is also one of the subsidiary companies of the Manitoba, is it not?

A. Yes, sir.

Q. Runs from Watertown to Huron, in South Dakota, and I believe also includes the road from Benson to the southwest?

A. Yes, sir. The cost of the Duluth, Watertown & Pacific is taken up on its books at the par of its stocks and bonds, giving as cost of road $2,105,000. As per the discussion of the Willmar & Sioux Falls road, part of the discount of the collateral loan of $8,000,000 was charged to these securities, Duluth, Watertown & Pacific bonds, and Duluth, Watertown & Pacific stock, carried upon the Manitoba books. The amount of discount which was charged against the cost of these bonds which brought them up to par was $631,011.35. The amount of discount remaining over and above that, was charged to the cost of the Duluth, Watertown & Pacific stock on the books of the Manitoba Company and amounted to $5,815.28. I have placed in the excess column the amount of the discount charged into the price of the bonds and the amount of the discount charged into the cost of the stock. I have in this case, as before, allowed the expenses of the bond issue and the stock issue to remain as a legitimate expenditure. The difference between the price of the stock as carried on the Manitoba books and the par of the stock taken in to make up the cost of the Duluth, Watertown & Pacific road amounted to $724,161.72. This I have

placed in the excess column. This shows for this road cost as per Company's books (they had no equipment) of $2,275 733.06. The items of excess cost, determined as above, amounted to $1,360,988.35. In a little addendum which I have made to this report, as this is about the only case where the information could be obtained without almost an infinite amount of figuring, I have been able to compare the cost as determined by me with the actual cost as shown by the construction ledgers in possession of the Great Northern Railway. I have taken the cost as shown by the stocks and bonds and improvements, and from that I have deducted the items of excess cost which were determined by me. Subtracting one from the other gives a cost of road, according to the figures which I have put here, of $914,744.71. The actual cost of this, as per the construction ledger, was $914,739.06, a difference between the construction ledger and the figures as determined by me of $5.65.

By Mr. DURMENT:

Q. Mr. Hillman, I notice on this exhibit in the cost of road, interest on bonds during construction (and it has been in all the other exhibits); I wish you would state just what that means and how the amount was arrived at, for my information.

A. When a road is being built, certain bonds are issued for construction purposes. They are issued generally prior to the time when the amounts are expended for construction and prior to the time when the road is turned over for operation. During that period, certain interest accrues on these bonds, and the accruing of that interest on the bonds and the payment of those coupons from the bonds is a proper charge to the cost of the road, and this is the adjustment which is mentioned wherever it states interest on bonds during construction or interest during construction.

The MASTER: It is interest on the bonds, however?

WITNESS: Yes, sir. Sometimes, if they paid for them in bonds, it would be the accrued interest on the bonds. In that

case, if we would be technical about it, there should be a slight amount of the interest placed in the excess column on account of discount on bonds, because the interest did accrue on the par of the bonds and not the absolute expenditure of money which would be represented by the bonds, but we have not gone into that account, as we considered it entirely too small an item and only cumbersome to the record.

Q. The thing that I have particularly in mind and I didn't understand is this: When do you begin to figure the interest, from the date of the bond or from the date when it is sold and the money obtained on it and to what time do you figure the interest—to the time of the completion and the opening up of the road, or for what period?

A. Up to the time of the completion and the opening of the road for operation.

Q. Now, when do you begin to figure your interest?

A. At the time when you put out your bond. You put out your bond July 1, 1906, it commences to draw interest at once.

Q. By putting out your bond, do you mean the date it bears as issued, or the time when it is put on the market and sold?

A. The time when it is paid over to the parties who are completing the construction or the time that it is sold to provide the means for that construction. If it bears a coupon and the construction does not commence for sixty days after that period, that is always taken into account in adjustment of the amount paid. The man having received one per cent, if they are six per cent bonds, two months interest would be one per cent, and having received one per cent interest included in his coupon would allow that in his settlement with the Company.

Q. Then, in short, from the time the bond is put on to the market until the road is completed and opened for operation, this interest on construction is allowed?

A. Yes, sir; and if the road should be completed by sections and opened by sections, this interest would be taken up by

sections, not necessarily wait until the entire road was completed.

By Attorney General YOUNG:

Q. In the case of the Duluth, Watertown & Pacific, the total issue of bonds was put out and delivered to the Manitoba Company before construction commenced, and interest began to accrue on them from the date of their delivery to the Manitoba Company, did it not?

A. I could not say how that was.

Q. As a matter of fact, all of these bonds and all of that stock were actually delivered by the Duluth, Watertown & Pacific to the Manitoba Company?

A. Yes, sir; I couldn't say as to the date, whether the Manitoba had already expended the amount of money on construction and then was reimbursed by the bonds and then the discount of interest was made, or whether the bonds were handed over to them beforehand and it accrued during the process of construction.

Q. The Duluth, Watertown & Pacific was not an operating company and never operated any line of road, so far as the Manitoba system is concerned?

A. I believe not; no, sir.

Q. You may proceed to Ex. K-6.

A. K-6 is the Park Rapids & Leech Lake line. The only item on this sixth period requiring comment is $50,000 discount on the $500,000 bonds. The accounts show that the amount expended on the road and its equipment amounted to the par of the stock and the par of the bonds, with the exception of the discount, and the only item we have on that is the $50,000 discount.

Q. That is another subsidiary company of the Manitoba system?

A. Yes, sir.

Q. Of which all of the stocks and bonds were delivered to the Manitoba?

A. Yes, sir. I now come to the seventh period, Ex. K-7, which I have used as not only to show some additional cost of the Great Northern books items which has heretofore been stated that this cost would be shown later on in the discussion of the Great Northern accounts, but I have also used this statement to summarize the preceding periods and to show the total of the excess cost as determined by me up to this time.

Q. The first item appearing upon this exhibit is the summary of the items comprising Ex. K-2?

A. Yes, sir. For reasons which I will explain, Ex. 1 is reserved as an addendum to this rather than as taking it up at the first item, so K-2 is the first exhibit which is taken up on K-7. The cost at which these properties was taken up in the Great Northern books amounts to $119,575,702.49 for the road and $9,820,962.81 for the equipment. The cost of the road, as shown upon the Manitoba Company books, is $120,970,-354.41; the cost of equipment is $8,426,310.89. This shows the discrepancy of which I spoke some little time since of the $1,270,000 which existed on the Manitoba books from 1893 up to the time they were closed. You will note that the amounts with which the Great Northern books open and the Manitoba books close show a difference.

Q. The sums of the two items the same are they not?

A. Yes, sir; the sums of the two items the same.

Q. That is, if you add the cost of road and equipment as appearing on the Great Northern books to the cost of road and equipment as appearing on the Manitoba books, the totals agree?

A. Yes, sir; the excess cost brought over from No. 2 amounts to $13,700,339.39, which is entered into the fifth column. In addition to this, there are certain other items of excess cost,

which I have placed in column No. 6. The Manitoba stock was purchased at 175 per share, its par value being $100.

Q. Was it originally purchased at 175? Wasn't it originally purchased at 125?

A. The Great Northern road purchased $19,660,000 of this Manitoba stock at 125; it was carried as an investment on the Great Northern books for a considerable period (three or four years) at that figure. The price which they paid was slightly in excess of 125. That is, sometimes they did purchase stock for which they paid a little more than 125, but they carried that value on their books showing the cost to them of the Manitoba stock. When the Manitoba Company was taken over by the Great Northern Company the stock was given a value of $175 per share. Instead of making two items of this—the price at 125 and then increasing the price by $50 a share to $175, I have taken the whole item as one transaction and put it up at $175 per share; and instead of taking up (as I had originally done) the disposal of the surplus, I took up, on this statement, the creation of the surplus, (that is, I mean that surplus of $75 per share) leaving the disposal of it to subsequent events.

Q. The original transaction, whereby the Great Northern road acquired substantially all of the Manitoba stock, was by a process of exchange of stocks, was it not, in the contract between the Manitoba Company and the Great Northern Company? Wasn't there a provision for taking up the Manitoba stock at 125, and was there not sufficient of the stock of the Great Northern Company reserved in the treasury to equal the outstanding unacquired stock of the Manitoba on that basis of 125, or up to the time that the Manitoba went entirely out of business, about two years ago?

A. Yes, sir.

Q. Now, when you refer to the time when the Great Northern took over the railroad of the St. Paul Minneapolis & Manitoba, do you refer to the time when it took the lease for 999

years in 1889, or to the time when that lease was abandoned and the road was actually transferred?

A. When the road was actually transferred, and the Great Northern became the consolidated system instead of an operating company.

Q. That was in 1907?

A. 1907; yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Proceed.

A. In addition to the item of excess cost of $13,700,339.39, which I mentioned as having accrued upon the blue-print showing the second period, there is an additional item of excess cost. The Manitoba stock, as I have mentioned, was taken over at $175 a share. At this time the Manitoba Company did not have a surplus which would warrant $175 a share. They had a surplus on hand of two million, fifty-nine thousand and some hundred dollars. I call your attention to the fact that this transfer was really made about the 1st of October, but that it was "dated back," as we say, to July 1st.

Q. 1907?

A. Yes, sir, 1907. There was an item they had carried to the credit of profit and loss on the Manitoba road of a little over $1200, making the total amount of the credit to profit and loss on the Manitoba books of $2,062,000. These figures are very close to the amounts and will suffice for illustration. Then, in order to justify the price of $175, an entry was made on the books of the Manitoba Company crediting profit and loss and debiting bonds redeemed by the sale of granted lands not heretofore accounted for, and this item amounted to $12,262,400.

Q. The language which you have used with reference to this item concerning bonds, is the language that appears upon the books of the Company, is it?

A. No, sir; it is rather an abstract of that language, and that is the reason I got this paper so I could read that item in full—that journal entry. Folio No. 80, journal No. N of the Manitoba road, journal voucher No. 6, November 1907: "Profit and loss credit $12,262,400, sinking fund first mortgage bonds, bonds retired and redeemed, $5,928,400; sinking fund consolidated mortgage bonds, bonds retired and redeemed, $6,334,000." The reading is to transfer to profit and loss the par value of bonds that have been retired or redeemed through the operation of the sinking funds, the said bonds having been created from the net proceeds from the sale of granted lands. The retirement of these bonds has increased the stockholders' equity in the property; the amounts now credited to profit and loss might have been credited as the bonds were redeemed or retired, but carried in special accounts as matter of information.

Q. The language you have now used is the language of the journal voucher?

A. Yes sir. The addition of this amount to the amount of profit and loss which was on the Company's books made this amount $14,323,550.40, the amount needed to justify the price at $175 would be $15,000,000. The difference, $676,449.60, was credited to profit and loss and debited to an account which was called "Proceeds of the sale of property." I will say here, that when the Great Northern used this surplus fund which they obtained from the redemption of the stock which they had purchased at 125, (they owning the Manitoba stock) they deducted this amount from the net proceeds.

Q. Which amount?

A. The $676,449.60 were deducted from the net proceeds, or from their share of the profits of this deal; so that that took care of this and did not duplicate this entry when they took it over on to their books; they deducted that from their purchase price, and accounted for it in the distribution of the surplus

which they obtained through the Manitoba stock being counted at 175.

Q. Now, at the time that this valuation was placed upon the Manitoba stocks in order to close out the books, the Great Northern owned all of the Manitoba stock, did it not?

A. All except about 3400 shares.

Q. But at the time of this last entry they had acquired the 3400 shares, hadn't they?

A. No, sir; for the 3400 shares they put aside the amount in cash in New York at 175 per share to meet that stock when it was turned in. They laid that aside and took that, of course, into the cost of their road and equipment, the purchase of that 3400 shares of outstanding stock, to which item I have not entered any objection in this discussion.

Q. So that the entire amount of added value which by these book entries was given to the stock of the Manitoba Company was a value which inured to the benefit of the Great Northern Railway Company on account of their ownership of the stock?

A. The bulk of it; yes, sir.

Q. And amounted to an increase of the capitalization of the Great Northern Railway Company to that amount, did it not, without the expenditure of any money?

A. Yes, sir.

Q. Do you know whether the bonds that were referred to in the journal voucher from which you read were the same bonds that are heretofore mentioned in your testimony at different times as appearing on the books of the Company as redeemed and which afterwards were charged back to the cost of road?

A. No, sir; I do not so understand it.

Q. These were additional bonds?

A. Yes, sir.

Q. That had been redeemed?

A. Yes, sir. They did appear, however,—I will say that

that is the reason that I made that correction in blue-print No. 2, crossing out two million and some thousand dollars, because I found afterwards that the whole matter was handled here, and I therefore left it out from Table No. 2. That was the reason I drew the pencil through that entry.

Q. What was done with the money that appeared in profit and loss account of the Manitoba Company after these credits were made?

A. That was absorbed by the purchase of the stock at 175. When they got through, this was—

Q. No, but after they had the stock and had it paid for all except a few shares, was it absorbed by the transfer of the road?

A. No, sir. The excess value of the stock which they had purchased, over and above its par value, simply "washed hands" when they received back 125, having, as I have, accounted for the increase in price to 175.

Q. As I understand it, at the time that the Great Northern purchased the outstanding stock of the Manitoba Company, they exchanged Great Northern stock for the Manitoba stock on the basis of 125 Great Northern for 100 Manitoba?

A. Yes, sir.

Q. So that it was a transaction between the Great Northern Railway Company and the stockholders of the Manitoba, was it not, and did not involve the Manitoba Company?

(No answer.)

Q. Now, after the Great Northern owns the stock, substantially all of it, and at the time when the railroad itself was being transferred from the Manitoba to the Great Northern, you say they gave to the Manitoba stock which it already owned an additional value of $50 per share?

A. Yes, sir.

Q. Which amounted to something over $12,000,000. What I wanted to get at is what was done with that money credited to the Manitoba Company.

A. $50 per share?

Q. Yes. You stated that at the time they took the road over they called the Manitoba stock worth 175; as a matter of fact, they had to pay 125 for it?

A. Yes, sir.

Q. What was the effect of that overvaluation of the Manitoba stock already in the treasury of the Great Northern?

A. It gave them a surplus account.

Q. In the Great Northern?

A. Yes, sir,—

Q. Of how much?

A. —which they did not carry into cost of road and equipment. It gave them a surplus of $9,834,000.

Q. That is, that additional amount became available to the Great Northern for dividend, did it?

A. Yes, sir; it could have been used for dividends.

Q. You are not able to say what it was actually used for?

A. Yes, sir; I can. From this $9,834,000 surplus (that is, that represents the $50 a share on the price paid) they deducted from that the $676,449.60 which I spoke of a moment ago, representing the difference between the absolute profit and loss account of the Manitoba Company and the $15,000,000 shown; they took that and deducted it from that $9,834,000, which left them a net profit, after deducting that, of $9,157,550.40. They then carried $4,157,834.12 into a suspense account, which was afterwards closed out by them to take up the discount on $6,000,000 sterling bonds issued. They had issued, in 1893, two issues, of $3,000,000 each, sterling bonds. The second issue had never been taken up, but in lieu thereof a $15,000,000 issue was made of Great Northern collateral trust bonds. The sum of the discounts on these two issues of bonds amounted to $6,107,834.12. In the meantime, they had transferred from their profit and loss account $1,950,000 to go into the completion of this Pacific Extension. Deducting that amount from

the $6 107,834.12 discount, gave them $4,157,834.12 discount yet outstanding. They then credit from this surplus which I have mentioned this amount, viz., $4,157,834.12, to that discount and removed it from the books. The object of this, as stated in their journal entry, was to make the cost of road and equipment of the Great Northern road, as taken over from the Manitoba property, at its net construction cost as shown by the Manitoba books and not at the advanced price at which they took it. That is where the $4,157,000 went. That left still to be accounted for $4,999,716.28 of this surplus, which they credited to a fund for the replacement of equipment.

Q. On the Great Northern books?

A. Yes, sir; that enters into the account which they have now in reserve for their equipment or for their Addition and Betterment account which I speak of in the last period that I have on my books.

By Mr. DURMENT:

Q. In the beginning of your explanation here you spoke of the profit and loss account, the amount actually in it—

A. Yes, sir.

Q. —and the difference between that and the $15,000,000 which should be there. By the actual amount in the profit and loss account I understand you to mean the amount as shown on their books, includes this $12,262,400. Does it?

A. The $15,000,000 includes that; yes, sir. I will now restate that, as I have run over the figures, and give the actual figures. When the Manitoba books closed, there was, in the profit and loss and carried on their books as profit and loss, $2,061,150.40. To this sum was then added the amount of the bonds in the sinking fund, $12,262,400, which raised the profit and loss account of the Manitoba road to $14,323,550.40.

Q. And that is the amount you spoke of as the amount actually in the fund?

A. Yes, sir. They then added to that $676,449.60, because

the price allowed for the stock exceeded the value of the par of the stock and the value of the profit and loss account by that amount; and then, as I stated, when the Great Northern Company took up the profit that they had made on the Manitoba stock, they deducted this $676,449.60 from that, thereby reducing their available amount of surplus by this amount which had appeared on the Manitoba books, which was a very conservative entry to make.

By Attorney General YOUNG:

Q. Now, what was the effect of this credit to bond discounts that you mentioned? I don't know that I grasp the full meaning of that.

A. Well, that wiped out the amount of the bond discount which could have been charged into cost of road and equipment, you understand.

Q. But which never had been?

A. Which never had been, which was carried on the side. You must remember, to be sure, that this amount was carried into cost of road and equipment, because the bonds were carried in on the par into the cost of road and equipment, as shown in the Manitoba statement for 1893, but it never appeared on the books save as this discount account, and appeared on the Great Northern books. You see then their construction books would show this discount in the construction books if they followed the usual plan and credited it up to the construction of road. In place of doing that they appropriated $1,950,000 from their income account reducing the discount by that much. When this profit came in from the stock at 175 they took care of the rest of that discount, with the exception of one small item which I will mention in a little while. The net result of that was that, if we take cognizance of the advance in value of the Manitoba stock (as we have done) from 100 to 175, it is not just for us to again reduce the cost of road and equipment by this discount; but, if we had not taken that into

account, we would then, of course, have had to treat this discount as we have treated discounts heretofore. But that amount was covered by their method of bookkeeping by this advance, which I have taken, of $12,262,400.

Q. It was a technical discount at best, it was a diesount upon bonds issued by the Manitoba Company to the Great Northern not put upon the market?

A. Yes, sir; those bonds were marketed the $15,000,000. Both the first and second issue were marketed. That is, the first issue being the issue of $3,000,000 pounds from Pacific junction to Spokane. In lieu of issuing bonds from Spokane west, $15,000,000 Great Northern collateral bonds were issued, and the combined discount on those two items of bonds was the amount which they have absorbed in this method.

Q. I thought you said yesterday, in speaking of that item on the exhibit in relation to the Manitoba Company, that instead of putting upon the market that second issue of bonds by the Manitoba Company which would sell at a discount, the Great Northern issued its own bonds and used the Manitoba bonds as collateral and in that way floated them at par.

A. No, sir; I didn't say they floated them at par. They did not float them at par, but they floated them at what they considered a marketable price and with the statement that they were unable to obtain the marketable price for this second issue of Manitoba bonds. The journal entry specifies that in speaking of the matter.

Q. You have placed the amount of the bonds redeemed by land-sales in your column of additional items of excess cost, because of the fact that they were redeemed from land-sales?

A. From the sale of granted lands, yes.

Q. And therefore should have been canceled, in your opinion?

A. Yes, sir; in my view of the matter.

The next item in column 6 is $199,146.48, journal voucher

103, June 30, 1893; shows that that was the profit on the Wadena & Park Rapids line, built in 1892, and it was credited directly to profit and loss on the Great Northern books. This was the line for which the Manitoba paid the Great Northern $817,000 in consolidated bonds.

Q. And this sum is the amount less than the face of those bonds which the construction of the road cost?

A. Yes, sir. The same is true with reference to the next item, $72,148.09. This was the line from Alton to Halstad, $155,000 bonds issued, and this was the profit on that issue.

The next item is $15,287.70, which was added to the cost of the Red Lake Falls line, which was again, paid for in bonds, to the amount of $265,755, in 1893. This is a profit on construction.

The next item is $210,753.68, the cost of the Pacific Extension, less than the face of the bonds charged to the cost of road in 1893. The Pacific Extension cost in toto, including the Everett and Cascade tunnels, $28,880,155.31. The total cost as charged on the books of the Manitoba Company for this was $29,090,909.99. The difference between these two items has been carried by me into the excess column. I will explain, in just a moment, how that excess cost arose, as there is another item just below which enters into it. I will refer again to this $210,000. Passing that for a moment we come to carrying over that third period on to this blank, which is carried over at exactly the figures as shown in the third period. The same is true with reference to the fourth period, the fifth period and the sixth period. The cost of the road with equipment and the amount which I have placed in the excess column are all carried over. We now come to the sundry lines which were constructed and purchased by the Great Northern road. These lines were built or purchased under various names. Whether there was (except in certain items which I will mention as we go along) any specific organization back of them, or whether

these companies issued stocks and bonds, I do not know; there is no record of their having done so, save where I mention it. It is often desirable to make construction in this manner, for the reason that the public will sometimes want a different name to the security, though it is backed by the same parties, and it may be that for that reason these roads were built under these names. However it may be I do not know, but in each case, save where I will speak of it, the cost as shown by the construction books of the Great Northern has been carried into the cost of the road and its equipment.

Q. Cost of equipment of the Great Northern road?

A. Yes, sir. I will say here that the Great Northern keep construction records and that they show the amount of expenditures and that these have been compared with those construction records and placed here.

Now, the next item which occurs is the Spokane Falls & Northern road. That was taken in at the price paid by the Great Northern road for that property. The books of the company were not available. I had something to do with that company when I was with the Northern Pacific, and I know that it was almost impossible to get information concerning it in any sort, shape or way, and, when the officials of the Great Northern told me that they could not give me any information on that subject, I was very willing to accept their statement on that.

The next is the Columbia and Red Mountain road, which, again, was purchased by the Great Northern road and the purchase price carried into cost of road and equipment.

The next item is the cost of terminal properties. This, of course, appears on the Great Northern books, and is taken over at the price of construction as shown by them.

The next item is the cost of the Pacific Extension. Besides the cost which they had already carried on the Manitoba books as the cost of the Pacific Extension, this further item of

$246,947.76 was carried as an excess cost of the Pacific Extension over and above the cost as shown by the construction books. The way that arose was that the Great Northern road issued $15,000,000 of consolidated bonds to take the place of $14,545,454.55 of extension bonds, the difference in the part of the bonds being $454,554.45. This item together with a small item, which, if I remember correctly, was the cost of the issuance of these consolidated mortgage bonds, amounting to about $2,000, was carried over into the cost of the Pacific Extension in order to make up the difference between the par that had already been carried in and the par of the collateral trust bonds; so that, in this entry, I have disallowed the item of $246,947.76 and I had already disallowed $210,753.68, or a total of $457,701.44, disallowed as excess cost of the Pacific Extension, the bulk of which item arose from the taking up of the collateral trust bonds at par in lieu of the bonds which were held as collateral on that loan. This item, of course, is in addition to the discount on the sales of the bonds which was afterwards eliminated by the method of which we have spoken. That is the reason for the disallowance of the $210,000 and the $246,000.

The next item is the Minneapolis Union Railway Company. The cost of this property on the books of the Great Northern Company was $2,667,748.30 in actual construction to which was added the value of the stock, $500,000, an arbitrary amount, raising the cost to $3,167,748.50. At the same time the par value of the Minneapolis Union stock, which had been acquired by the Great Northern road by purchase from the Manitoba Company, was reduced from $1,000,000 to $500,000. Having reduced the value of the security, the reduction which was taken off the value of the security was arbitrarily added to the cost of the Minneapolis Union road and I have, therefore, placed in the excess column the $500,000.

Q. By the manner in which this entry was made on the books of the Railway Company, the reduction of the stock was put into the cost of the road?

A. Yes, sir.

Q. So that there was actually no reduction at all?

A. No, sir.

Mr. DURMENT: By "reduction of stock" you mean a reduction of the value at which the stock was carried on the books of the Company?

WITNESS: Yes, sir.

Mr. DURMENT: Not an actual elimination of the stock?

WITNESS: Not an actual elimination of stock; reduction of the book value. Incidentally, as we will see in the next item, they are entitled to a credit on this account of half of the reduction, but we will come to that later.

The next is the Seattle & Montana Railway Company. This was partially bought and partially constructed. The only item of criticism that we can find on this was the discount on bonds of $127,500, which I have placed in the excess cost column. This road was partially purchased and partially built by the Great Northern road. The other items I have taken directly from the entries on the Great Northern books and have no further criticism to offer on them. You will note that the cost of the road, as shown on this statement, amounts to $240,349,771.44; the cost of the equipment to $51,064,643.90; the total value of road and equipment was $291,414,415.34, both as taken up on the Great Northern books and as shown upon the books of the prior companies, although as stated heretofore, the division between the road and the equipment varied slightly. The total excess cost, period 2 to period 7, inclusive, as placed by me in this column, amounted to $36,117,272.02. I have repeated this item immediately afterwards for the purpose of adding the two different results which I had on Period 1 to them so that they could be readily compared. Then from Period No. 1 we had an excess of cost, as determined from the St. Paul & Pacific, by the first method, of $12,126,342.19, as determined by the second method of cost, $21,347,040.76, mak-

ing a total up to this point of (on method which I have noted as "A") $48,243,614.21; on method "B," of $57,464,312.78.

Q. In your opinion, either one or the other of these sums should be deducted from the book cost of the road, and the one to be deducted would depend upon whether you accepted the one method of ascertaining the excess cost during the first period, or the other as shown on Ex. K-1?

A. Yes sir. I also would call attention right here to the fact that in bringing forward Period 1, of course we bring forward no value of cost of road and equipment, as that was already taken up when we brought the figure forward into the Manitoba road. We only treat, in this discussion of the total capitalization, the excess cost which showed up to that date. In the other roads, as we consolidated them, the amounts would show; but here your road was already brought over and included in the cost of the Manitoba road when we opened Period No. 2, and, therefore, of course, that would not put any additional amount to the cost of road and equipment; we would just consider the excess cost and bring that over in the discussion of the matter.

We now come to the Eighth Period. The eighth period is different from the others in the fact that it is the memorandum of the cost of the securities and investments acquired in the following companies. These securities were acquired from time to time by the Manitoba road. They were all sold to the Great Northern road in 1890. The first item is this: Minneapolis Union Railway Stock, par value $1,000,000, cost carried on the Company's books $750,000.

Mr. DURMENT: That is, on the Manitoba books?

WITNESS: Manitoba books; yes, sir. This was acquired on the 30th of June, 1882, and was credited to profit and loss. In other words, there was no value paid for the shares. They were simply taken on and credited in the book as their value of

$750,000, and that $750,000 was credited to profit and loss and became available for dividends.

Q. You mean to say that in fact there was nothing paid for that stock?

A. No, sir.

Mr. DURMENT: You mean to say that the Great Northern road took it in as no value?

WITNESS: No, sir; the Manitoba road took it in.

Q. The Manitoba road took it in, and ostensibly paid that much for it, but in order to balance it credited back to profit and loss the amount, which shows that they didn't pay anything for it?

A. Yes, sir; paid nothing.

The next item is timber lands in Todd county. These timber lands were segregated and were part of the original plant of the road. They were taken up on the Company's books as of a value of $350 000 and were credited to profit and loss, the result being to increase profit and loss by $350,000 in that year, with no expenditure.

Q. That item of $350,000 credited to profit and loss on account of timber lands in Todd county was not money arising from sales of lands in Todd county, but money arbitrarily credited, as I understand it, to profit and loss, resulting from a segregation of certain lands up there which were valued at that sum?

A. Yes, sir; however, on June 30, 1891, there was $125,704.66 charged back to profit and loss and the account of Todd County lands closed which left a net excess of $224,295.34 on this account.

By Mr. DURMENT:

Q. As I understand the significance of this item of $350,000 Todd county lands in profit and loss it is this: that land (the land which was segregated) was included in the $31,000,000 value with which the Manitoba opened this road as the cost of its properties?

A. Yes, sir.

Q. And when they transferred this $350,000 for those segregated lands to profit and loss, they didn't make any deduction from their capital account because of it?

A. No, sir.

Q. But it was apparently taken out of the capital account and added to profit and loss as a profit, and which was a net increase upon their books of $350,000 of property?

A. Yes, sir. I would say that this Todd county timber land is heavily timbered and had good tie-timber on, and it was segregated for the purpose of cutting ties off it, and, from time to time, as the ties would be cut and used on the road, the account was given credit for it and wiped out down to $125,704.66, when, the timber having been cut off of it, the balance then was debited to profit and loss, which leaves the net amount $224,295.34.

The MASTER: That was a part of the land-grant, was it?

WITNESS: Yes, sir.

The next account is the Minneapolis & St. Cloud land-grant, $642,000. This was taken up and made an account on the books of the Company, and was credited directly to profit and loss, no value for the lands, they having been included in the original cost of the road.

The MASTER: Any explanation about it in the books?

WITNESS: No, sir.

The other items which we have mentioned here go on down, showing, in the first column the par value of the securities and, in the second column, the cost of the securities as carried upon the Company's books.

We now come to the item St. Paul, Minneapolis & Manitoba land-grant contract No. 2. We have already discussed land-grant contract No. 1 and took that out of our accounts when we did not allow the unbilled freight as an item which should enter into the cost of the road but put it in our excess column;

therefore, we have nothing to say here concerning Manitoba land-grant contract No. 1. Further along certain land contracts were taken and fund created from these contracts for the sales of land amounting to $500,000. They were placed as security for a loan of that amount with the Equitable Trust Company of New York. At the time that the Great Northern road took over these securities there were still $403,398.95 of these contracts outstanding or of the account represented by these contracts outstanding. As this was also a part of the original land-grant and cost of the road, I have placed it in the excess-cost column. This statement then shows that the par value of the securities purchased by the Great Northern road from the Manitoba road were $22,762,198.96; that the cost as shown on the Manitoba books was $11,627,976.98; and of this cost I place as an excess $2,019,694.29. The price paid by the Great Northern road for these securities was $19,250,000. That is made up as follows: Subscription to the stock of the Great Northern road $10,000,000; the assumption by the Great Northern road and its payment (for it was paid at the time) of the $8,000,000 collateral trust of the Manitoba road, and a credit to the Manitoba Company on the Great Northern books of $1,250,000, making the total price paid for these securities $19,250,000, which price exceeds the book value as shown by the Manitoba by $7,622,023.02. Adding this amount to the excess cost which we have determined accrued to the properties while on the Manitoba books or in process of being entered on the Manitoba books, we have a total excess cost on securities purchased by the Great Northern road of $9,641,717.31.

By Attorney General YOUNG:

Q. The collateral trust bonds which you refer to as having been paid were the collateral trust bonds issued August 1, 1888 to the amount of $8,000,000 that you made reference to before in your testimony?

A. Yes, sir.

Q. All of these securities that had been acquired in other companies by the Manitoba Company had either been entered up as part of the cost of the road or been paid for by the capital of the Manitoba company, had they not?

A. Yes, sir; they had been paid for by the capital of the Great Northern Company.

Q. Of the Manitoba Company? The Manitoba Company owned them.

A. Oh, yes, sir; had been purchased by the Manitoba Company, and were carried in their investment accounts. They had a large account of a large amount of investments or such as they had purchased.

Q. But these were securities of other roads which had been capitalized by them by using the proceeds of its own capital for their acquirement?

A. Yes, sir.

Q. So that when they were sold to the Great Northern, which was the successor and composed almost exclusively of the same stockholders as the Manitoba, to sell them for any amount was a duplication, was it not, of the capitalization? For instance, take the bonds here of the Duluth, Watertown and Pacific, $1,375,000, the capital of the Manitoba Railway Company was used to pay for those bonds, was it not? and, as a matter of fact, the Manitoba road had constructed a line of railway against which those bonds were issued and taken these bonds in payment; it had acquired the money that it used in the construction of the road and in the acquisition of these bonds by the disposition of its own securities in the market?

A. By either disposition of its own securities in the market or by the investment of its surplus; yes, sir.

Q. Or its earnings. In any event, they were paid for out of what might be called capital account of the Manitoba Company?

(No answer.)

Q. If you don't—that is a matter, I suppose, that sufficiently appears and might resolve itself into a question of argument. That might not be a proper question, but the point I want to get at is this: The Manitoba Company acquired the road of the Duluth, Watertown & Pacific, it paid for the construction and took over the securities of the Duluth, Watertown & Pacific as its compensation. Now, then, the money for the construction of the road was paid out of the treasury of the Manitoba?

A. Yes, sir.

Q. Therefore, when the Manitoba Company acquired the road it acquired all it was entitled to, did it not? It couldn't acquire the road and carry the stocks also as an independent investment.

A. Yes, sir; but it did not acquire the road, Mr. Young. It acquired the stock and bonds of the road. The road remained an independent entity until the time that the Great Northern absorbed it amongst the other roads; and, at that time, the Great Northern road, being the possessor of these stocks and bonds of the companies, turned them back as part payment or the total payment and part payment of the property which they acquired from these different roads; they turned back the stocks and bonds to the road. Now, what became of those stocks and bonds since they turned them back I don't know. They may be in suspense somewhere, in escrow, or they may have been canceled. They should be canceled.

Q. Well, they should have been canceled in the first place, shouldn't they? There were two capitalizations, but if the capitalization of the Duluth, Watertown & Pacific was to remain in existence as independent stocks and bonds—Didn't you say the Manitoba stocks had been out to acquire the money to purchase them, making up and having two sets of stock out for the same railroad? They should have been canceled when taken into the treasury of the Manitoba Company, because it paid for them out of its capital or out of its surplus, one or the other?

A. I haven't gone into that to see how much of that capitalization was duplicated.

By Mr. DURMENT:

Q. Will you give me again the figure of credit which was given the Manitoba road on the Great Northern books by this purchase where they paid $19,250,000?

A. Yes, sir.

Q. The credit, not the other item,—just the credit.

A. $1,250,000; which, of course, entered into the profit and loss account of the Manitoba road and was carried forward from year to year until our final closing of that profit and loss account when we took up the $175 per share of the Manitoba stock. It comes right along, all these items which I have mentioned, (there are a great many of them which I have mentioned here) went into that profit and loss account and finally came out in the $175 which we have discussed and placed in the excess column.

By Attorney General YOUNG:

Q. You may take up Ex. K-9.

A. Ex. K-9 is certain additions which, as we went through, have developed as necessary to add to this account of the securities, and also a final summary of the amount of the cost of road and equipment and the security account, and also a statement of the reserve account of the Great Northern Railway. We bring forward from the eighth period $9,064,717.31. The first item that we have to discuss is a $250,000 reduction, in my excess cost, on account of the fact that the Minneapolis Union Railway stock was only carried on the Manitoba books at a valuation of $750,000 though its par was $1,000,000. When the Great Northern reduced the book value of this stock to $500,000 we entered as an excess item the $500,000, but it had only been carried as $750,000 instead of $1,000,000, therefore the Great Northern are entitled to $250,000 deduction from my excess on this transaction, which I have given them here.

We now come to an item which was the principal from land contract sales, Land Contract Sale No. 1. It seems that this was a part of the securities purchased by the Great Northern from the Manitoba road. This was the returns on the land contract. Instead of giving the proper credit to the securities purchased (that is, $19,250,000) this item, $198,479.78 was credited directly to profit and loss by journal voucher 121, June 30, 1891. This item is therefore placed in the excess column, as it should have gone to reduce the cost of the securities, as it was one of the securities purchased. Journal voucher No. 19, for 1908, shows that there had been sales made and transfers made from the investment account of the Great Northern, that is, $19,250,000 paid for these securities of $18,139,799.67. These were charged to special accounts called "Proceeds of Securities and Proceeds of Investments." When, as I stated a moment ago, a road was purchased by the Great Northern road and it turned back its stocks and bonds, it credited this purchase, and it amounted to $18,000,000. They now wanted to close out the $19,250,000 of the investment account for these securities purchased, and they had these other accounts as liabilities, so they put one against the other but they still had some securities left, and they valued those securities which they had on hand and turned them in as specific accounts, giving each bond and each security its name and title and amount, for $2,050,903.15, which made the total of the valuation of the properties yet remaining in this security account and thus accounted for as sold $20,190,702.82. If from this amount we deduct the original cost, $19,250,000, we find that this account was swelled $940,702.82, which has been placed by me in the excess column.

The sum total of the amounts which I have mentioned bring the excess cost of securities up to $10,530,899.91. We now add to these amounts the amount brought forward from Period No. 7, A and B; adding to each of these amounts brought for-

ward the above amount gives us for the total under method "A" an excess capitalization of $58,774,514.12; under "B" $67,995,212.69.

I have made a note here to which I wish to call the attention of the Court, and that is, on June 30, 1908, the report of the Great Northern road to the Railroad Commission shows the following items: "Fund for permanent improvement and renewals $4,844,265.78," which was principally derived from the profits on the sale of the Manitoba stock. That is merely a comment, has no bearing upon the fact whatever.

By Mr. DURMENT:

Q. Well, I think those have a material bearing. Will you tell us how much of that is St. Paul, Minneapolis & Manitoba stock proceeds and how much from some other source?

A. No, sir; I can't tell you. There are credits and debits both made to that account right along, and I couldn't tell you.

The other item is the fund for depreciation of equipment in service, amounting to $14,369,984.52, making a total in the renewal and depreciation funds of $19,214,250.30.

Q. Can you tell us how that fund of $14,369,984.52 fund for depreciation of equipment in service, was accumulated?

A. Yes, sir; it was accumulated—

Q. From what source it comes.

A. It accumulated from time to time from the amounts laid aside from the income account to the credit of this account, to take care of the depreciation or for purchase of new equipment, as they would lay aside funds from their excess income.

Q. Was that income from operation?

A. No, sir; that would be—It might be income from operation, or it might be income from securities. It was from the total income of the road after the deduction of the operating expenses and taxes that this fund was laid aside. Now they are compelled to lay aside a fund each month and each year,

under the Interstate Commerce Commission, and this fund will probably gradually increase from time to time, depending upon whether the road is parsimonious or liberal in making its allowance for the renewals of equipment.

Q. Well, as I understand, this fund of fourteen million plus for depreciation of equipment in service is laid aside from time to time, as years go by, and this is the aggregate for a number of years.

A. Yes, sir.

Q. During the years when this was laid aside as a fund for replacement of equipment was there anything charged out of the capital account or the column you have "Cost of Road," on account of depreciation?

A. No, sir; not directly from cost of road. Some of this fund, as I stated, originated back there where they had their surplus from this Manitoba stock, but having taken into account the increase to $175 for that, I am not in a position to criticise the fact of the transfer of that amount to this fund.

Q. Yes, but what I want to get at is this: I gather from this exhibit that this is a fund intended to replace, when it becomes necessary, the equipment which has been purchased and carried in your first two columns, "Cost of Road" and "Equipment."

A. Yes, sir.

Q. And that, as that equipment which is to be replaced by this fund has depreciated, there has nothing been charged to it of the cost of the equipment or cost of road to offset it?

A. No, sir; nothing. I will probably cover that right here in the comment I make on it, that if we consider this amount, the $19,214,250.30, as applicable to the cost of road and equipment, the excess cost would be correspondingly increased. That is, if we take it that the equipment and the improvements which are covered by this reserve account are worth so much less, and this was simply intended to cover their depreciation and their consequent renewal, then we would increase our excess cost

by that much, because they are properly charged, in this view of the case, against the cost of the road as shown upon the Company's books. If we do not take that view of it but consider them as a reserve account, then they become a part of the profit and loss account, although they cannot be used for the purpose of dividends, but they are a credit which is part of the profits permanently invested, and, therefore, are profit and loss; with that view of it it would be increased from $27,183,091.52 to $46,397,341.82.

There is one item which I want to mention and which I spoke of this morning: in going over my account here I find an unchecked item; of that discount on the collateral loan $150,535.40 was charged up to the value of the Northern Steamship Company stock, which was one of the securities held by the Great Northern Railway, and I did not, in my computations, anywhere make any reduction on that account. As this net discount on these bonds would probably be checked up with the amounts which I have mentioned as going into the Duluth, Watertown & Pacific and the Willmar & Sioux Falls Railway, I deem it necessary to mention this amount,—that I have overlooked that in making up my statement here—$150,535.40.

Q. That is, in the $2,000,000 and some odd discounts which you distribute?

A. Yes, sir; $2,003,389.55.

By Attorney General YOUNG:

Q. There was a portion of that charged up to the securities of the Willmar & Sioux Falls, a portion of it to the Duluth, Watertown & Pacific, and a portion to the Northern Steamship?

A. Yes, sir; and somehow or other I overlooked that amount.

Q. And in each case the amount of that discount charged up was used on the books for the purpose of bringing into the stocks and bonds of those respective companies up to the alleged par on the books?

A. To the book value; sometimes par and sometimes less.

Attorney General YOUNG: I desire to offer in evidence Deft's. Ex. K-Hillman, made up of K-1 to K-9, inclusive, and in offering them I desire to state we do not offer them for the purpose of demonstrating that the items carried into this so-called excess cost by the account of Mr. Hillman are the only items that should be carried into that column; they are an exemplification largely of the books of the Company, and there are some other items in some of the exhibits that we will very likely claim in argument should have been carried into that column. We do not want to be understood as absolutely assuming that every item that should go into that column has been carried in there by Mr. Hillman. With that reservation we desire to offer them in evidence.

Q. Are you able to state, from your examination of the books of the Company, how much of the cost of the road as it appears from those books, was paid for out of capital and how much of it was paid for out of earnings?

A. No, sir; I have not made that investigation.

Q. Could it be ascertained?

A. It could be; yes, sir.

The MASTER: Could you determine it from the exhibits already in evidence, or would you have to make further independent examination of the records of the Company?

WITNESS: It would have to be made from the records of the Company. It would have to be made by a comparison of their reports to the State, as far as they have gone, and the checking of capitalization and the issues of capitalization against the construction items in toto. I will state that General Young asked me to do this but that my engagements were such that I did not have time to follow that out. Though I had commenced to do so; I did not have time to follow that out and get the testimony in in the form that we desired.

Q. Well, could you do that, do you think, before the date set for adjournment?

A. I am afraid not. I have to leave for New York tomorrow night.

Q. What time would it take to get at it?

A. It would take me just about one week to check that and get it.

Q. Could you set somebody at work at it?

A. Yes, sir; I have a man I could set to work to do that, that could prepare that while I am away.

Mr. DURMENT: We wanted to make a short showing as to the express companies, it is brief, Mr. Hillman is prepared to do it. I can do it now if the parties are willing. It is in support of this proposition: the contracts with the railroads for the organization of the express companies, we insist, show that the roads are simply farming out to others a part of the duty which they are under to the public as common carriers, and that, for the purpose of rate-making, at any rate, it is entitled to consideration in this case, what is the profit and expense of doing the express business. The express companies operating over the Great Northern and Northern Pacific railways have, since the last adjournment filed reports with the State from which those things all appear, and it fairly appears from those reports, in connection with the testimony that has heretofore gone in, that those companies are express companies owned and controlled by the respective railway companies, and it won't take more than until 4 o'clock, if we may go on at this time.

WITNESS: It is now seven minutes after 4.

Mr. HOW: Whom do you propose to establish that by?

Mr. DURMENT: By Mr. Hillman; but I can do it by somebody else at the next hearing, if you want to. We will defer that until the next sitting.

Adjourned until January 24, at 10 a. m.

Federal Building, St. Paul, Minn., Tuesday, January 25, 1910, the hearing was resumed at 10 o'clock A. M.

CONWAY W. HILLMAN,

recalled on behalf of defendants, testified:

By Mr. DURMENT:

Q. Mr. Hillman, at the close of the last session you were asked to check over your Ex. K and advise us (that is, advise counsel for the State) as to whether there were any duplications in the capitalization or overcapitalization of the Great Northern Railway not indicated by your testimony as to the excess of the book cost of the road over the actual cost. Have you done so?

A. Yes, sir.

Q. Do you find any such charges?

A. Yes, sir.

Q. Will you please state what they are and explain them fully so that we may all understand them?

A. I have not done this as thoroughly as I could wish, as I understood that it is necessary to hasten matters and I had other engagements which took up a great deal of my time, but I can state that to the extent of $16,219,969.70.

Q. Will you explain just how that is made up and how you arrive at that result, in detail?

A. The first case is the cost of the Duluth, Watertown & Pacific stocks and bonds. By reference to Ex. K-8 it will be noticed that both these bonds and stocks were in the amount of securities purchased by the Great Northern Railway Company from the Manitoba Company, and the account which was then raised upon the Great Northern Company's books was securities and properties purchased, which was debited with $19,250,000. When that account was closed upon the Great Northern Company's books there was, as shown on my Ex. K-9,

$940 000 excess, which was also taken up. In addition to that, when the Duluth, Watertown & Pacific road was purchased by the Great Northern road on June 30, 1907, and became a part of the System—that is, when the Great Northern road became a road owning not only equipment and securities but owning a railroad and having a cost of road account—it took over the Duluth, Watertown & Pacific Company for the full value of the amount of moneys expended as shown upon my Ex. K-3. The consideration was the assumption of the outstanding liabilities of the Duluth, Watertown & Pacific road and the return of its stock to that road. Both these outstanding liabilities (that is, the bond liability and the stock,) were included in the securities purchased, if you will remember. Then the entry on the Great Northern books practically came that the stock which was held (that is, the security account) was debited with the $730,000 (which was the correct entry) and canceled that much of the security account. Instead of debiting this security purchase account with the $1,375 000 bonds, the credit was to outstanding funded debt, the Great Northern having assumed the funded debt, which then created a new obligation of the Great Northern Company amounting to $1,375,000, to offset which they had in their treasury $1,375,000 of Duluth, Watertown & Pacific bonds. The securities account which they had of the $19,250,000 therefore did not receive credit for this amount but a new credit or liability account was entered on the books amounting to that, $1,375,000 and the $1,370,000 bonds retained as an asset in the hands of the Great Northern Company.

Q. Does that finish what you have to say about that?

A. Yes, sir.

Q. I want to ask one or two questions to make certain that I have it right. As I understand your testimony now and the results you wish to arrive at it starts in this way: the Manitoba road built the Duluth, Watertown & Pacific for its stocks

and bonds and in that way acquired the stocks and bonds of the Duluth, Watertown & Pacific; later it sold the stocks and bonds of the Duluth, Watertown & Pacific to the Great Northern Railway in that list of securities purchased by the Great Northern and shown by you on your Ex. K-8—

A. Yes, sir.

Q. —to the amount of nineteen million and what?

A. $19,250,000.

Q. The Great Northern at that time issued twenty millions of stock based upon the securities thus purchased?

A. Based upon the securities thus purchased for fifty per cent of the stock, the balance paid in cash by the stockholders of the Manitoba road, and in addition to that the Great Northern Company assumed the payment of an eight-million dollar collateral loan upon the securities which they purchased, making the total price of those securities $1,800,000; they then made a credit in the account of $1,250,000 to the Manitoba road and the net results being that the Manitoba road obtained a credit for its securities turned over of the ten million dollars; they obtained the payment of an obligation on those securities amounting to eight million dollars, they obtained a credit in the amount of $1,250,000, the net result being that the Great Northern Company started with the securities in its treasury and $750,000 cash capital.

Q. Well, what I want to get at is did the Great Northern issue securities (I mean stock) to cover the purchase of this nineteen millions.

A. Yes, sir; they issued twenty million dollars of stock.

Q. Was that all used in the purchase of this nineteen millions of stock?—this nineteen millions of securities?

A. Yes, sir; all except $750,000 cash capital.

Q. Then later the Great Northern Railway took over the Duluth, Watertown & Pacific Railway, along in 1907?

A. Yes, sir.

Q. It paid for that road when it took it over by returning and canceling all the capital stock of that road and by assuming the outstanding bonds amounting to $1,375,000?

A. Yes, sir.

Q. The Great Northern, however, at that time owned the stock of the Duluth, Watertown & Pacific and owned the bonds the payment of which it assumed?

A. Yes, sir.

Q. Being a part of the nineteen million dollar securities purchased from the Manitoba?

A. Yes, sir.

Q. Was there additional issue of stock by the Great Northern based upon its acquisition of the Duluth, Watertown & Pacific in 1907?

A. No sir.

Q. Then, to make it a little clearer, if that is true, as to this handling of the securities which it had purchased from the Manitoba,—by handling I mean this use of them in purchasing the Duluth, Watertown & Pacific—would amount to an overcapitalization or a showing of an excess of "water"?

A. Having paid for the securities by the issue of stock, when they came into possession of an asset represented by the cost of road and equipment—which asset was paid for by the assumption of the liabilities of the Duluth, Watertown & Pacific Company—they should have credited the $730,000 stock to the cost of the securities purchased and they should have credited to the same account the bonds. They, however, created a new liability account and placed the bonds as an outstanding obligation and held them as an asset in its treasury.

Q. They still continued to hold the bonds of this road in their treasury as a claim against the property; that is, as a live asset?

A. As an investment; yes, sir.

The MASTER: The Great Northern did, after it had pur-

chased the property?

Mr. DURMENT: Yes.

Q. And they still carried the bonds on the books as an investment of the Great Northern?

A. Yes, sir.

Q. And this $1 375,000 of bonds which was owned by the Great Northern Railway Company and thus used in the purchase of the Duluth, Watertown & Pacific are now carried on its books as a liability of the Great Northern and the bonds themselves carried on its books as an investment of the Great Northern?

A. Yes, sir.

Q. What other instances have you to mention?

A. The Park Rapids & Leech Lake.

Q. By the way, do you know whether they continue to pay interest on those bonds or not?

A. I didn't look, sir.

Q. Now, you may go on.

A. The next instance is the Park Rapids & Leech Lake road, which was also taken over by the Great Northern road in 1907, and the five hundred thousand dollar Park Rapids & Leech Lake bonds shown up as one of the assets of the Great Northern Company and also as an outstanding liability of the Great Northern Company which should have been treated in the same way. In this matter, however, there is a slight difference in the handling, because at one time these Park Rapids & Leech Lake stocks and bonds had been written off, if you will remember in my former testimony, from the Eastern Railroad of Minnesota's books to profit and loss and turned over to the Great Northern road; but when the Great Northern road took possession these securities should have been canceled.

Q. Well, they were not canceled?

A. No, sir.

Q. How were they carried and how were they charged?

A. Carried as an asset of the Company and as an extra liability of the Company. I am referring to the bonds now. In regard to the Park Rapids & Leech Lake stock, $500,000, in one place in the annual report to the Railroad Commission of 1908, of the Great Northern road, this stock is shown as still in the hands of the Great Northern Company. However, in their list of assets this stock is not shown and the final entry on the Great Northern books (at least, the last entry which I have examined) shows the cancellation of this stock of the Park Rapids & Leech Lake road, and were it not for the fact of that entry on the books (on, I think it is page 21 of the annual report) that this stock is still in existence somewhere as an asset in the hands of the holding corporation, I would not have mentioned this matter, but only have treated the bonds in this way. The fact is that the entry, as far as I have gone, shows the cancellation of the Park Rapids & Leech Lake stock, it does not show as an asset of the Great Northern Company. I don't know where it is, I haven't traced it.

Q. With that exception, the transaction is substantially as with the Duluth, Watertown & Pacific?

A. Yes, sir.

Q. Go on to the next.

A. The next item is of the Pacific Extension Mortgage. You will remember in the former testimony that the Pacific Extension Bonds for the Second Division, amounting to three million pounds, were not issued, but they were put up as collateral, and in lieu thereof the Great Northern Company issued fifteen million dollars collateral bonds of their own, these three million pounds extension bonds being held as the collateral on that issue.

The MASTER: On the Great Northern fifteen million issue?

WITNESS: Yes, sir.

The MASTER: You speak of the fifteen million Great Northern as collateral, then you speak of the three million pounds

as collateral—that is, put up as collateral to the fifteen million of the Great Northern; why do you style the fifteen million Great Northern "collateral"?

WITNESS: I style them "collateral" because that is the title of the bonds.

The MASTER: Well, were they collateral in fact, or were they the straight issue obligation of the Great Northern?

WITNESS: They were the straight issue of the Great Northern road, but from the fact that they had back of them collateral and were issued on collateral—the title of the bond is "Great Northern collateral loan"—

The MASTER: It was the primary indebtedness of the Great Northern Company?

A. Yes, sir.

The MASTER: But it held other obligations as collateral to that and that is what gives them the name of the fifteen million collateral?

WITNESS: Yes, sir. We would use that as a qualifying term to the mortgage, just the same as we would use "first mortgage" or "second mortgage." The "collateral loan" referring to the Great Northern road would be a qualifying word to the issue of the bonds the same as "Firsts" or "seconds" or "consols" would be, and that is the reason I have used it.

Q. That is, it was the Great Northern obligation or bond to do certain other things put up as security for it?

A. Yes, sir.

The MASTER: Yes, I understand it. I was not quite sure what their character was, whether a primary indebtedness or not.

WITNESS: In 1898, the Great Northern road issued fifteen million dollars capital stock and paid off the collateral loan, paid off their fifteen million dollar bond. They thereby released the underlying bonds on this loan which were the Pacific Extension Bonds, and took them into their assets and at the

same time put them out as a liability of the Company, creating an extra liability for the total amount of the Pacific Extension Bonds. Between the time of the issue of their stock and the taking over of these bonds they had reimbursed themselves by the sale of one million pounds of these bonds, leaving two million pounds in their treasury when they took over the Manitoba properties, the cost of road. The cost of road, including this $9,696,969.70 (which is the amount in United States money of the two million pounds) they had therefore assumed not only the cost of the road upon which these mortgages were issued and taken in as a part of the cost, but they had also assumed as an asset these two million pounds remaining in their treasury and had created the new obligation of the outstanding bonds to that extent, thereby duplicating their capital account to that extent—$9,696,969.70.

The next item is in the Spokane Falls & Northern road where the stock was issued to acquire the securities of this Company during the same year that the Great Northern took up this collateral loan, and with this stock certain securities were purchased of the Spokane Falls & Northern road. When that was taken into the Manitoba in 1907, $2,583,000 of the bonds were taken over in the same manner that I have described and became also an asset of the Company and taken up as a liability of the Company, for which stock had already been issued as a liability of the Company. In the same manner $2 065,000 Eastern Railroad of Minnesota Northern Division bonds were taken up in the transfer of that Company; the total amount being $16,219,969.70. I have not had time, as I said, to examine critically other transfers to this account and therefore am not competent to criticise any further items which may have entered into their capitalization, but I would say that on certain roads which have been constructed in the last few years (constructed by them) the amount shown upon their construction books agrees with the amount which they took into

their capitalization. This is true with regard to the Minnesota and Great Northern, the Duluth and Great Northern, the Montana and Great Northern, the Billings & Northern and also with the Seattle & Montana road. The Seattle & Montana road was, of course, purchased and included, and that was the cost of securities as well as the cost of construction, but it seems to have been handled absolutely according to the value of the property taken over by them.

Q. You said, in response to a question of mine, that you didn't know whether the road had continued to pay interest upon these bonds it had assumed or not in the taking over of these roads. Does that mean you haven't examined the books upon that point or that you thought there is no way of telling?

A. Oh, there is a way of telling. It would be reported, and I judge that they have done so, but if it did it would be a credit to income account and at the same time have to be debited to an income account and would practically leave their income on a par as if they had written it off.

Q. Have you examined from the reports to the Railroad & Warehouse Commission of these roads to determine whether they show them there as interest-bearing obligations?

A. No, sir; I did not look at that point. It would show there.

Q. I will ask you, at the next intermission, to look at the Railroad & Warehouse Commission reports so as to advise us on that point.

A. I have asked my man who has gone up to bring some books for another purpose that one of the gentlemen wanted to see, to bring that report down with him, and I think I will be able to answer it in a few minutes.

Q. What is your view as to whether this sixteen million odd dollars you have just referred to would go to increase or in any way affect the excess cost of road as shown by your Ex. K?

A. It would not go into the excess cost of the road and

equipment, but it would go into an excess capitalization of that road and equipment. There is a difference between water in cost of road and equipment, and then, also, in the issuance of securities against that point. Primarily the object of Ex. K was to show the excess cost of the road and equipment as the purchase of these securities, where the Great Northern started out and did buy them, was so intimately connected with the start of that road, these amounts were added in and an extra exhibit, if you will remember, which was Exhibit K-8, and also then carried forward a little bit further on Exhibit K-9, and, as far as that Exhibit K-8 goes it really might be considered as a part of the statement I have made today and not as an excess cost of road and equipment.

Q. Have you, at any time in your testimony in this Great Northern case, given us a table or exhibit showing the capitalization as claimed by the Great Northern road, that is, showing the amount of capital stock it claims to have outstanding and the amount of bonded debt outstanding?

A. No, sir; I have not.

Q. I suppose you haven't that information at your tongue's end?

A. No, sir; I haven't looked at it. It would of course be shown in the report of the Great Northern road to the Railroad Commission, which is a public document on file in the capitol and could be referred to or quoted from.

Mr. DURMENT: I suppose it would not require more than a few minutes to get that information from the report.

Mr. HOLDEN: There is an annual report in that for 1908.

Mr. DURMENT: That would show the outstanding stock?

Col. CLOUGH: It shows everything, in detail.

WITNESS: Then, as I understand it, instead of quoting the capitalization from the report to the Railroad & Warehouse Commission, you will leave that for the annual reports not already as exhibits in this case.

Mr. DURMENT: Yes. We desire to introduce some evidence as to the Great Northern Express Company. I have prepared here a statement which has been submitted to the counsel for the other side, and it is agreed between us that it shall be admitted into the record that this statement as I will read it, is substantially correct; is that true?

Mr. HOW: Yes.

The MASTER: As I understand, this is a stipulation of facts.

Mr. DURMENT: Yes.

The MASTER: Very well.

Mr. DURMENT: That these facts which I shall read from this statement are true.

The MASTER: Yes, stipulated, a stipulation of facts in the case.

Mr. HOW: We don't stipulate any effect of them. They are immaterial, but the facts are true.

The statement was read as follows:

The Great Northern Express Company is a corporation organized under the laws of the State of Minnesota. It has filed with the Railroad & Warehouse Commission of the state, a report of its business for the year ending June 30, 1909. The Great Northern Railway Company likewise has filed a report with the said Railroad & Warehouse Commission for the year ending June 30, 1909. From these reports, it appears that the directors of the Great Northern Express Company are the President, Second Vice-President, Treasurer, General Manager and General Traffic Manager of the Great Northern Railway Company. It appears from the said report of the Great Northern Express Company that it is in the sole control of Lake Superior Company, Ltd., by virtue of the ownership of the capital stock of the Great Northern Express Company. The Lake Superior Company, Ltd., is a holding company for the Great Northern Railway Company, but it does not file any report with the Railroad & Warehouse Commission, and the truth of

this understanding cannot be established from the records of the Commission.

There exists between the Great Northern Railway Company and Great Northern Express Company, a contract by which the railway agrees not to transport valuable packages, goods or merchandise of any kind whatsoever, on its passenger trains, except regular passenger baggage of the railway Company, and giving the Great Northern Express Company the sole right to do the express business on the Great Northern Railway Company, and providing for the payment to the Railway Company by the Express Company, monthly of a sum equal to 40 per cent of the gross receipts of the company for the month. A copy of said contract is presented herewith.

The said report of Great Northern Express Company shows that its capital stock is 10,000 shares of the par value of $100 a share, amounting to a par value of $1,000,000; that 1,000 of these shares were issued for cash, and in return for them the express company received $100,000 in cash; that 9,000 of the shares representing $900,000 par value of stock were issued in consideration for extension of contracts with railway companies for express privileges; that the total cost of all its property and equipment to June 30, 1909, was $71 288.91, and that the adjustment of its annual inventory showed the value of that property on June 30, 1909, to be $65,905.24; that its gross receipts from operation for the year ending June 30, 1909, were $2,164,433.44; that it paid for express privileges during the year $911,493.22, of which $845,628.04 was paid to the Great Northern Railway Company, and of which various other sums were paid to other railway companies, a number of which the report of the Great Northern Railway Company for the same period shows are owned or controlled by Great Northern Railway Company. In addition to this amount paid for express privileges the express company paid for operating expenses $592,361.15, and that it had remaining for the net operating

revenue of the year $660,579.07, out of which it paid taxes amounting to $31,342.69 which it reports as operating income, and shows for a net profit for the year. That out of this net profit it paid a dividend of 50 per cent upon the par value of its capital stock, being $500,000, which it paid in dividends, and in addition thereto, carried forward to its profit and loss account for the year a profit of $129,236.38.

The said report of the said express company shows its current assets and liabilities as of June 30, 1909, and showed that it then had net cash assets of the value of $872,768.19 also.

Mr. DURMENT: In connection with that I hand to the Reporter what is admitted to be a copy of the agreement between the Great Northern Railway Company and the Great Northern Express Company, under which the express company operates on the railway. That is admitted to be a copy, I suppose?

Mr. HOW: That is attached to the stipulation, isn't it?

Mr. DURMENT: Yes. Whether it is referred to in it or not I don't know. This is also to be copied into the record.

The agreement attached to the stipulation is as follows:

AGREEMENT made this first day of September, 1906, between the GREAT NORTHERN RAILWAY COMPANY, hereinafter designated the "Railway Company," party of the first part, and the GREAT NORTHERN EXPRESS COMPANY, hereinafter designated the Express Company," party of the second part, Witnesseth,

WHEREAS, heretofore, the parties hereto entered into a certain contract dated the 21st day of October, 1899, covering the handling of express business over the lines of the Railway Company, including the line of the Duluth, Watertown and Pacific Railway Company, which said contract by its terms will expire the first day of July, 1917; and

WHEREAS, the Eastern Railway Company of Minnesota and the Express Company heretofore entered into a certain contract dated the 21st day of October, 1899, covering the hand-

ling of express business over the lines of the said Eastern Railway Company of Minnesota; and

WHEREAS, said Eastern Railway Company of Minnesota has, since the execution of said contract, leased its line of railway to the Railway Company, and said contract between the Eastern Railway Company of Minnesota and the Express Company has become binding upon the Railway Company; and

WHEREAS, said contracts do not clearly state the rights and duties of the parties and disputes have arisen between the parties as to the meaning and interpretation of said contracts;

NOW THEREFORE, in order to more clearly define the rights and liabilities of the parties hereto under said contracts, it is hereby agreed that said contracts be and they are hereby amended to read as follows:

The Railway Company shall transport, by car or cars attached to each of its regular passenger trains, to and from all points on the lines of railway operated by it, including the lines of the Duluth, Watertown and Pacific Railway Company, the Eastern Railway Company of Minnesota, Minnesota & Great Northern Railway Company, the Dakota & Great Northern Railway Company, the Montana & Great Northern Railway Company, the Crows Nest Southern Railway Company and the Seattle & Montana Railway Company, the messengers, safes, packing trunks and freight of the Express Company; it being understood that the persons hereby agreed to be transported shall be only such as accompany any freight and valuables of the Express Company, and such others as it may from time to time become necessary to send over the lines of the Railway Company upon the business of the Express Company, passes for whom shall be granted by the Railway Company, upon the written request of the proper and authorized officers of the Express Company.

The employes of the Express Company, while on or about the trains or premises of the Railway Company covered hereby

shall be subject to all rules and regulations of the Railway Company then in force for the government of its own employes, and in case of disobedience or disregard of any such rules or regulations by any employe of the Express Company, he shall, at the request of the Railway Company be discharged from the service of the Express Company and shall not be re-employed by the Express Company without the written consent of the Railway Company.

In consideration of the privileges and facilities hereby granted and agreed to be furnished by the Railway Company to the Express Company, as herein provided, the Express Company hereby assumes all risk of and liability for any and all personal injuries to or death of any of the employes of the Express Company caused while such employes are in or upon the trains, cars or premises of the Railway Company in the transaction of the business of the Express Company hereunder, and for any and all damage to property in the custody of the Express Company as carrier, or otherwise, whether such personal injuries or death or such damage to property be caused by the negligence of the Railway Company or any employe thereof, or otherwise; and the Express Company agrees to reimburse, indemnify and save harmless the Railway Company for and on account of any and all sums of money which the Railway Company may be compelled to pay in consequence of any claims asserted on account of personal injuries to or death of any such employes, or on account of such damage to property, or in defending or compromising such claims, including all counsel fees and expenses in connection therewith.

The Railway Company shall provide for the conveyance of the messengers, safes and freight of the Express Company during the full term of this agreement ample facilities upon all trains run to accommodate the business and traffic of the Express Company, and light and warm the cars or car compartments used by the Express Company when necessary, and shall

likewise furnish and provide for the transaction of the business of the Express Company proper and sufficient space and facilities in the stations of the Railway Company.

The Railway Company will also transport, free of charge over its own lines of railway, the wagons, trucks, safes and other equipment of the Express Company necessary to be transported to the various stations and offices of the Express Company for the use of the Express Company at such stations, whether such stations and offices be on the line of the Railway Company or elsewhere.

The Express Company shall pay to the Railway Company as compensation for the rights, privileges and facilities covered hereby, during the term of this agreement, as follows:

A monthly sum equal to forty (40) per centum of the gross receipts of the Express Company accruing for and during each month upon the line of the Railway Company covered hereby; payment of such sum to be made on the first day of the next succeeding month, or as soon thereafter as practicable at the office of the Treasurer of the Railway Company at St. Paul, Minnesota.

None of the employes of the Railway Company, for themselves or for the Railway Company shall be allowed, during the continuance of this agreement, to transport valuable packages, goods or merchandise of any kind whatsoever, except regular passenger baggage upon the passenger trains of the Railway Company.

The Railway Company covenants to and with the Express Company that it will not, during the continuance of this agreement, contract with any other person or corporation for the transaction of an express business over the lines of railway of the Railway Company, or any portion thereof, or permit any other company to transact an express business over said lines of railway so far as it may lawfully prevent the same.

The Express Company shall and will, during the terms of

this agreement, transport for the Railway Company and such of its subsidiary companies as the Railway Company may from time to time designate, between all points reached by the Express Company, all money, valuable packages and other property, material and supplies requiring speedy transportation, as may be required by the Railway Company, free of charge, and deliver the same at all proper places of delivery thereof, or at terminals.

In case any employe or agent of the Railway Company shall be employed by the Express Company to perform any service for the Express Company such employe shall, with reference to such employment, be deemed exclusively the employe of the Express Company, and the Express Company shall be solely responsible for the acts or omissions of such agent or employe in or about the business of the Express Company; Provided, in the event of loss occurring at any office where the employe acts jointly for the Railway Company and Express Company, all moneys recovered, salaries or amounts due such agent by either company, shall be applied in payment of the loss pro rata in proportion to the amount of each company's loss.

This agreement shall supersede the said agreements hereinbefore recited, and shall continue in force until the 1st day of July, A. D. 1917.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first hereinabove written.

THE GREAT NORTHERN RAILWAY COMPANY,
By L. W. HILL,
GREAT NORTHERN EXPRESS COMPANY,
By ROBERT I. FARRINGTON, Prest.

In presence of

_____

CROSS EXAMINATION.

By Mr. HOLDEN:

Q. Mr. Hillman, you are not able to find any reports of the St. Paul & Pacific prior to 1872, I believe?

A. That is correct, yes, sir.

Q. You ascertained from Mr. Drew that the books of the Company were not to be found, also?

A. Yes, sir.

Q. Can you state so that it will appear in the record, over how much of a period of time prior to 1872, the construction of the St. Paul & Pacific had been proceeding?

A. My recollection on that is that the road was chartered in 1857; that there was some little work done (practically a small amount up until 1862. At that point there was a little more work done, (and that active construction, you might call it, for the amount shown, commenced in about 1867. That is my recollection of it from going over the papers.

Q. So that from 1857 to 1872, a period of fifteen years, and during which with more or less interruption construction had been going on, there were no records available whatsoever?

A. None, to me.

Q. Now, did the annual report of 1872—which is the first figure shown on your Ex. K-1—upon which the cost of road is stated at $10,740,274.36, and of equipment $399,649.93, show what elements entered into those figures?

A. No, sir.

Q. I don't know whether you have stated it or not, but I wish you would state if you ascertained how many miles were included in the properties of the St. Paul & Pacific Company at the time of the receivership of those properties.

A. It was in the neighborhood of 318 miles of Completed road and 104 miles of more or less completed road. That is my recollection of the subject.

Q. Isn't it a fact that there were but 283 miles of completed

road and 104 miles of partially completed road, making a total, completed and partially completed, of 387 miles?

A. There is a difference in the figures which you have quoted and those which I have spoken of, of 35 miles—which doesn't exactly appear as to whether it was completed and included in the 104 miles or not. The items to which you refer are 207 miles and 76 miles making 283 miles, 207 miles the Breckenridge, and 76 miles on the original St. Paul & Pacific, and then 104 miles of more or less completed track. There was, and has been right along, mentioned through the records 35 miles more of track, and whether that is included in the 104 miles of more or less completed track or not, I do not know and could not state.

Q. These reports which you have turned to for information, can you state to what extent they are in detail or how complete they are in giving information as to the expenditures for different purposes or as to the nature and character of construction that was being carried on from year to year?

A. For the report of 1872 the cost of road and equipment (the figures which you have mentioned when you started) are in a lump sum and are marked "Estimated." The amounts expended subsequently, as shown upon Ex. K-1, are the amounts expended for construction purposes and also the amount expended for equipment. My recollection of those books is that the detail is exceedingly meager. This amount expended for cost of road I think is in two divisions, amount for right-of-way and amount for construction purposes, but I would not even be sure that it had those two divisions.

Q. Well, speaking generally, Mr. Hillman, is not that condition of affairs generally true with reference to railroad accounting and railroad accounts that the science and method of keeping accounts in early days were very meager and indefinite as compared to the method and character of accounts which are now kept under the instructions and in accordance

with the rules laid down by the Interstate Commerce Commission?

A. Yes, sir; in early days each accounting officer was practically a law unto himself, or each board of officials were a law unto themselves as to how they should keep their accounts.

Q. And from your experience as an accountant in this class of work you have ascertained that prior to the promulgation of general rules on the subject by public authority, there were wide difference of opinion among railroad accounting men and railroad authorities as to the proper method of keeping accounts for railroads?

A. There were wide differences in practice; yes, sir.

Q. Were there not also differences of opinion as to the proper accounts to which various items of expenditure should be charged?

A. Well, I was not in the accounting department at that time, but I should say from the difference in the methods used that there must have been differences of opinion. I would infer that.

Q. Now, to illustrate that, Mr. Hillman, you have spoken about the question of discount upon securities sold, and, as I understand your position, you hold to the view that discounts should not be charged to the cost of road, and for that reason you have rejected—placed in the excess column—all items of discounts on securities which you found charged to the cost of road on the Great Northern books.

A. Yes, sir, I have placed those in the excess column.

Q. From what source would you pay the cost of selling securities which is termed "discount"?

A. That item of discount does enter into the matter of building a road; it should, however, in my opinion, be an item which should afterwards be assumed by the stockholders and taken up by them before they are entitled to any profit whatever upon their investment.

Q. It is nevertheless, is it not, a cost of issuing securities? You are dealing now with the method that cost should be paid for?

A. Yes, sir; it does enter into the cost of placing securities, but it must be recollected that none of the cost represented by the discount—which is a money item—ever is expended on the road; the cost of the road is the dollars you put into it, not the amount of securities which you issue to obtain those dollars, and on that basis the discount was not allowed in my cost of road and equipment.

Q. Now, Mr. Hillman, as a matter of fact, up until very recently, has it not been the authorized and accepted practice of railroads in this country generally to charge discounts upon securities to the cost of road?

Mr. DURMENT: By "authorized" do you mean authorized by any law or simply by the officers of the road?

Mr. HOLDEN: Oh, I don't claim by any statute law, but I refer to the public authorities such as commissions.

A. It has been the universal custom to do that.

Mr. HOLDEN: I would like, at this time, to read into the record paragraph 30 of the classification of construction expenses prescribed by, the Interstate Commerce Commission which reads as follows:

The MASTER: In force at the present time?

Mr. HOLDEN: No, sir; I am coming to it in a moment. This was in force until 1907. "INTEREST AND DISCOUNT. To this account should be charged discount on securities sold; interest on loans effected, and on notes issued for construction purposes or overdue payments to contractors or other creditors, and discount, interest, and exchange on other commercial paper issued for a similar purpose. Premium realized from sale of bonds, stock, or other securities should be credited to this account. Discount or premium realized from sale of bonds, stock, or other securities for a specific work should be applied to such work."

Q. Now, without spending too much time on this exhibit, Mr. Hillman or getting into an argument on the merits of the question (which I desire to avoid) I simply want to establish what I take it you know and which is a fact, that this rule of the Interstate Commerce Commission which I read from their classification published in 1898 represented until their change in 1907 the general view of accountants on railroad subjects as the proper principle to be followed, did it not?

A. I would say yes to that proposition.

Q. And prior to the time the Interstate Commerce Commission undertook to prescribe a classification, running back of the time when their activities on that subject began, it had also been considered the proper practice by accountants in railroad matters generally, had it not?

A. It had been the custom; yes, sir.

Q. So that the accounts of railroads generally, just as those of the Great Northern road, year by year, were made up insofar as discounts on securities are concerned, upon the generally accepted basis of stating that account?

A. Yes, sir.

Q. Now, when the Interstate Commerce Commission prescribed a new classification, it is my information that they prescribed a discount on securities should be charged against surplus, didn't they?

A. Yes, sir; I believe that is the last rule.

Q. And in requiring the railroads to state their cost of road as of July 1, 1907, they did not undertake to require them to go back and strike out from the cost of road all the discounts on securities which under their direction had previous to that time been charged against the cost of the road, did they?

A. No, sir.

Q. So they accepted the railroad accounts in this country generally up to that date, so far as that subject is concerned, and it stands today under their authority that discount on

securities is a proper charge against cost of road prior to the date I speak of?

A. That is their interpretation of that.

Q. And you would not undertake to say, Mr. Hillman, at this time, that accounting men generally who make a study of this subject are agreed that discount on securities should be charged to surplus and not to the cost of road, would you?

A. No, sir.

Q. As a matter of fact, when the Interstate Commerce Commission changed this classification in 1907, did not all of the accounting men who had participated with them and with Professor Adams on the subject of a classification, file a protest against this particular change?

A. I am not advised on that.

Mr. DURMENT: There is no objection to all this going in, but I want it to appear in the record that our contention is that whether it is a proper item to be allowed or disallowed in the matter of cost of road is a question of law for the Court entirely, and not a matter of accounting or expert evidence or opinion.

The MASTER: Well, that was the contention of the complainants when they made the objection in direct testimony, so that it will be accepted as true.

Mr. HOLDEN: Well, if I understand it you do not offer Mr. Hillman as an expert on the subject nor offer his opinion on the subject?

Mr. DURMENT: No, my opinion is that that is a question of law entirely for the Court. We will show the facts, and our contention is his evidence is made up in accordance with our contention as to the law.

Mr. HOLDEN: We still think the testimony is competent to show the general opinion of accounting men on the subject, and I suppose Mr. Hillman in connection with the Interstate Commerce Commission's document may properly speak of the situation to the Court.

Mr. DURMENT: I don't object to that.

The MASTER: On your objection it was excluded, wasn't it?

Mr. HOLDEN: I don't remember, your Honor, his speaking about it.

The MASTER: Mr. How objected to the witness giving his reasons. He was permitted to give the fact that there was a discount charged up.

Mr. HOW: I objected to his arguing the law, that is all.

Mr. HOLDEN: Mr. Hillman started to state a suppositious case of some roads building to the Coast, etc., and the objection was then made; but, however, I don't desire to pursue the matter.

Mr. DURMENT: No, I didn't mean to enter an objection to your going into it if you think it is material or has any bearing in this case, I am perfectly willing you should do it. All I want is to make it appear in the evidence that our contention is that that is a question of law for the Court to determine and not a question of expert opinion, that we have simply brought him to show the facts, and had his table made on our theory of the law, that is all.

Witness: Shall I finish the answer to your question that I started to?

Question read.

A. In answer to your question, prior to this discussion, I would say that I was not advised on that subject, but I have, in meeting various railroad accounting officers, heard from them the most strenuous objections to this method of classifying the account. I would also say here that it was my intention, as this matter had been reopened which had been closed by Mr. How's objection in my former examination, has been opened in this cross-examination, to continue and make my restatement of the "suppositious" case which I had started to make, but that in view of this subject taking the turn it has, I do not think that that is at all necessary at present and I will not do so, but let the matter stand.

Q. Now, as a part of your Ex. K-1, Mr. Hillman, you have referred to question 180 in the Farley case. I have in my hand the record in the Farley case and I desire to read the question 180 and the answer of Mr. Hill so that it may be in the record in connection with your testimony and exhibit. (Reading.)

"Q. 180. What, if anything, was said in this interview in Montreal between you and Mr. Smith and Mr. Stephen, in regard to the prices which you should offer the committee for the various issues of the bonds held by them?"

"A. We considered the matter more on the basis of the entire value of the property, or the price we were willing to pay for the property, and we made the prices of the bonds to correspond as nearly as we could; the basis in our mind being that we were willing to pay so much for the entire property, or for such of the bonds as would give us the control of the entire property, and leaving the matter of the prices of these bonds, while we named figures that we thought would, in the main, be such as we could get the Dutchmen to accept. We thought it was wise to leave them to settle the prices as between the different classes of the bonds themselves provided it did not intrfere with the amount of the price—the aggregate price, under the respective prices paid, or proposed by us in our proposition."

Mr. HOLDEN: I also want to read the question 181 and the answer to that, as it follows immediately.

Mr. DURMENT: Have you read the whole of the answer to 180?

Mr. HOLDEN: I did; yes.

"Q. 181. In discussing what prices the Dutch committee would be likely to accept or recommend, what, if anything, was said in regard to the views which Mr. Carp had previously expressed to you, and to what extent were those views taken into account by you gentlemen in fixing your prices?"

"A. Our interviews with Mr. Carp were all discussed, and the prices to be named in our proposition were such as we thought, from our conversations with Mr. Carp, would be considered by the Dutch committee. We meant to keep them as low as we could."

Q. The question 180 and the answer to that question are the same as you have reference to in your Ex. K-1?

A. Yes, sir.

Q. Can you state the number of miles of road, Mr. Hillman, with which the Manitoba Company began business?

A. I am not prepared to state it exactly, but my recollection is it was 637 miles.

Q. Well, my information is 656 miles, but it is one or the other, I take it.

A. That may be the correct one. I am quoting from memory.

Q. Mr. Hillman, is it your understanding (I think it appears in your testimony) but is it your understanding that the parties who bid in the St. Paul & Pacific properties at the foreclosure sales were the owners of the bonds or a substantial majority of them under which those sales were made?

A. That is my understanding of it.

Q. Is it your contention that the answer made by Mr. Hill which I read contains any estimate of the value of the properties with which the Manitoba Company began business in 1879?

A. Yes, sir, I should say that that was a fair estimate of the then value of that property. It was, as is stated in papers, Farley case and others, in a very much dilapidated condition and in a condition of neglect, and that I have taken as a fair estimate of the value of the property at that time—not of the cost of the property, but of the value of the property at that date.

Q. Well, what date?

A. At the close of the receivership, sir, when it was taken over.

Q. So, in answer to my question, which was whether you considered that to refer to the value of the property with which the Manitoba Company started business, I understand you to say that you consider that answer to be an expression of opinion of the value of that property as of that time?

A. Yes, sir; of the value of the property which they took over, with the understanding, of course, that as shown in this Ex. K-1 that during the receivership and subsequent to the acquisition of the property Mr. Stephen and his associates put up the money for the receiver to make completions, and also certain other improvements to the property which are all shown in that statement, but that this original basis which I mentioned which was indicated by question 180 was the fair value of the property outside of the improvements made by the receiver and the improvements and betterments made by Mr. Stephen and associates which were afterward charged to them on the books of the Company, and not to the cost of road.

Q. Then, if I understand your answer now, you do not mean that that answer covered the property with which the Manitoba Company began business, but you limit that expression in your opinion to the property of the St. Paul & Pacific exclusive of the work done by the receiver and any subsequent parties in bettering that property or adding to it?

A. Yes, sir; you cannot separate that particularly, because the property was not taken over until the receiver had made those improvements and then certain other items arose afterwards which by some agreement or understanding (which, I do not know) further improvements were made and were charged back to Stephen and associates and therefore became part of the value of that property when the Manitoba took possession of it.

Q. Now, do you claim, Mr. Hillman, that the money which was actually spent on the St. Paul & Pacific properties, or, in fact, upon any of these properties, could have been secured at

any cheaper rates or under any better conditions than they were actually secured when it was actually secured at the time secured, and, if so, will you specify any instance of that kind?

Mr. DURMENT: Just a minute. We have not offered Mr. Hillman as an expert witness as to the reasonableness or unreasonableness of any of these discounts or items of interest and do not care to be bound by his testimony upon that point. If counsel wants to make him his own witness and ask him upon that, we have no objection.

Mr. HOLDEN: No, I don't care to make him my own witness, and with your statement, I think I will withdraw that question.

Q. Are you familiar Mr. Hillman, with the current rates of interest during the period of the St. Paul & Pacific construction in Minnesota and North Dakota?

Mr. DURMENT: We object to that as not cross-examination. I don't understand that anything in the evidence of this witness here has tended to show upon our part as to whether a particular rate of discount or particular rate of interest was reasonable or unreasonable, or whether it was the current rate or not the current rate. We have not gone into that question at all.

The MASTER: I think that is true.

Mr. DURMENT: And, as I say, unless counsel desires to make him his own witness, we object to it. If he wants to do that I have no objection, but we have made no showing upon that point and do not propose to be pushed into the record as making a showing upon those matters.

Mr. HOLDEN: I don't claim you have made a showing on that subject, but I have a right to ask the witness the question, and I would like an answer.

Mr. Durment: I say if he makes him his own witness we have no objection, but we object to it as not cross-examination.

The MASTER: The Master will not pass upon the question. The witness can answer, if the question is insisted upon.

A. I was not in active business at this time. The only experience I would have upon the subject was the fact that in subsequent years it became necessary for me to look over the Northern Pacific records, and as they were building at the time in Minnesota, they were paying 7.3 per cent interest on their bonds, commonly referred to as the old Jay Cooke 7-30's.

Q. And do you know at or about that time what the current rate on commercial paper and banking paper in Minnesota or North Dakota was?

A. No sir; I am not conversant with that at all.

Q. And the interest rate of the 7 and a fraction per cent on the Northern Pacific bonds which you ascertained was paid was in connection with a discount of about what from the face of those bonds, in order to float them?

A. That would appear from the testimony which has been filed heretofore in this case or in the Northern Pacific case (which is collateral with this) and I think on Mr. Gray's Ex. V. I could not say without reference to that what this amount of discount was.

Q. Was it not substantially 20 per cent?

Mr. HOW: A bonus of four shares of stock with each bond.

WITNESS: I should say that it was about 20 per cent.

Q. Well, to refresh your recollection, do you know or have you not ascertained in your experience that the current rate of interest in Minnesota during the period that we have been speaking of was 12 per cent and upwards in commercial transactions?

A. I have no information whatever on that subject, at that time. As I state, at that time I was not in active business, and it was only subsequent to that time and through the handling of the old 7-30 Jay Cooke bonds that I was able to answer the question at all.

Q. If I understand it now from the statement made by the counsel for the State, we are not to take any of your testimony

in reference to the discount on bonds or prices at which bonds may have been issued as expressing any judgment or opinion as to whether or not the figure at which they were issued was proper or improper, according to the current rate or going conditions or otherwise. That, I understand, Mr. Durment, is your position?

Mr. DURMENT: We have not offered his evidence and don't consider that his evidence is to be taken as put in by us as bearing upon the question of what was the current rate of discount or interest or reasonableness of it at all.

Q. One other question, Mr. Hillman: These various issues of bonds on the St. Paul & Pacific properties were merged into judgments in the process of foreclosure; did you ascertain the total amount of the decrees or judgments covering those bonds and interest upon them?

A. No, sir; I think not. I know that the amount was in the neighborhood of $28,000 000, principal.

Q. And how much interest, approximately?

A. I don't like to be quoted on these, because I didn't make any particular reference, but my recollection is that it ran up with the defaulted interest to the neighborhood of $32,000,000.

Q. And that was exclusive of the amount that had been spent on the properties by Farley, receiver, or by George Stephen and associates, was it not?

A. Yes, sir; and also included the full par of all securities issued, whether they were (as some of them were and as I mentioned in my former testimony) some of them in escrow or not.

Q. When you say securities you mean bonds?

A. I mean bonds. No reference to the stock at all.

Q. I wish to direct your attention to your Ex. K-2 for a moment, on the subject of unbilled freight, Mr. Hillman. During what period do those entries appear?

A. The entries of unbilled freight shown upon Ex. K-2 commence in 1884 and continue for six years, 1884 of course,

with each year understanding that it is the fiscal year closing June 30, 1884, 1885, 1886, 1887, 1888 and 1889.

Q. Now, from your examination of the books of the Manitoba Company during those years, did you find any charges to cost of road on account of transporting freight or construction material other than these charges which you have stated to be unbilled freight?

A. Yes, sir; there was an item where that amount was adjusted for all prior years on account of carrying freight. It amounted to four hundred thirty some thousand dollars, but I do not believe that I would be able now to state in what year that occurred, but there was an entry taking up that freight.

Q. That was an entry, general in its character, taking up apparently preceding items or charges on that account, but do you find any current charges during the years 1884 to 1889 for the cost of transporting construction material as the construction work was progressing?

A. I will have to look for that at my subsidiary papers (working papers) but my recollection is that there were such charges. If you desire I will look at that at the interval and be prepared for it.

Q. I wish you would. Can you state or have you computed the total amount of additions and improvements to the property shown on your exhibit during the years that unbilled freight was shown?

A. It could readily be determined from the additions which are mentioned upon the face of the Ex. K-2, it is simply a matter of adding them up.

Q. I wish you would during the noon recess compute the total amount of additions and improvements and also the total amount of unbilled freight charges during the same period and the percentage which that is of the amount of additions and improvements.

A. If you will pardon me, I don't know whether I am entitled to further explain or not, but if not, it can be objected

to. I would state that this unbilled freight business has nothing whatever to do with the freight which accrued upon construction. It is an item *sui generis*, it has no connection with that whatever. It is, as I said before, simply an arbitrary entry whereby the freight earnings were increased for that period. This is conclusively shown by the entry in 1889, where the Great Northern then having taken over the Manitoba properties, there was no account to which it could be charged, and, therefore, a portion of the land contracts were taken, unbilled freight credited and land contracts debited and there could not possibly, by any means, be freight on a land contract.

Q. You have made that statement several times before, Mr. Hillman, and I haven't gotten to that point in my examination. It is probably not necessary to restate your final conclusions on the subject. What I desire to ascertain from you is whether or not during the period when unbilled freight charges were shown on the books you ascertained from the books that there were any other form of charges accruing to the Company for hauling construction material. You have stated that it is your recollection that there were. Of course, you don't claim, Mr. Hillman, that the Company, for a period of five or six years, should carry construction material, even if it is for itself, or for outside companies or outside corporations, without having a proper right to charge for that service against the cost of construction or against the outside company, do you?

Mr. DURMENT: Well, I don't care what he claims. That is for the defendants in the case to claim on that proposition. I think there may be a serious question about it myself.

Q. Will you answer the question.

A. I would state that I believe that the road is entitled to the expense of handling construction material.

Q. Well, during this period covered by unbilled freight, you have discarded all of those items, if I understand you?

A. Yes, sir.

Q. And you are not able to say now that during that period there were charged to the cost of road anything on account of hauling construction material, are you?

A. As I said a moment ago, I want to look at that; my recollection is that there was such an account, and there certainly was an entry made showing a total amount of that and making an allowance for that at four hundred and some thousand dollars directly, beside other items which might have accrued in the interval, which I will see in the examination.

The MASTER: Entirely independent of the unbilled freight?

WITNESS: Yes, sir; but of course, I do not for a moment abandon under any circumstances that this unbilled freight is an entry sui generis, has nothing whatever to do with whether there was any freight carried or not or charges made on construction material.

Q. It will not be so taken, Mr. Hillman, as a waiver of your opinion on that subject. Now, one other question Mr. Hillman: Have you any knowledge of the practice of railroads heretofore in charging improvements or betterments to operating expenses, and if so, can you state in general terms whether there has been any definite practice on that subject?

A. Each road, up to the last classification of railway accounts, practically followed their own ideas on the subject. As a general proposition, certain items which were properly construction, would be charged into operating expenses. I would also say that, as a general proposition, these items were kept tab of—perhaps not accurately, but in a general way—and recognition given to stockholders subsequently for such expenditures. That has been the general practice.

Q. That practice would vary, then, according to the judgment of the individual road or its officer charged with determining what amount of the cost of a particular improvement should be charged to the cost of road or as an addition or improvement, and what amount should be charged to operating expenses, if I understand you?

A. Yes sir; that particularly that would be the case. There were generally well understood rules, which grew into a custom that large expenditures should be classed, of course, as construction; that is, this opinion was such that a man would not be able to build eight, ten or twenty miles of track or build a branch road or put in very heavy improvements, such as a yard at a terminal point, and be allowed to charge that to operating expenses, but, within certain limits, that was a matter of the option of the operating officers.

Q. And it is a fact well known, is it not, that some roads were much more liberal than other roads in charging improvements and betterments to operating expenses?

A. Yes, sir; the practice varied according to the road.

Q. Even after the Interstate Commerce Commission undertook to exercise jurisdiction on that subject there has remained a difference of opinion among accounting officers as to the proper practice in that regard still has there not?

A. Yes, sir.

Q. In stating your cost of road, on, for instance, your Ex. K-2, have you attempted to show what amount, if any, that was invested in building up the road or any of its parts and charged to operating expenses?

A. No, sir; I have not.

Q. And therefore there is a certain sum running over a period, if I may state it, from 1857 down to the latest period covered by your exhibit, representing cost of road as it stands today and paid for out of operating expenses, which is not covered by your figures; that is true, is it not?

A. There is probably a certain amount of that, but I would state that from the year 1857 on to at least the 70's 1875-6, that the tendency was that operating expenses were charged to construction to a great extent, and I would say that prior to perhaps the taking up of this road by the Manitoba system,—up to that point, that the balance would be the other way, it

was almost the invariable custom to get rid of the operating expenses through that construction account.

Q. Mr. Hillman, you have already stated that you were not active in those days, and, therefore is it not a fair statement to say that your last answer is a mere opinion of your own and not based upon any actual knowledge of the facts? You have not ascertained that from examining any of the records of the St. Paul & Pacific Company, have you?

A. Not of the St. Paul & Pacific; no, sir.

Q. So while it may be your opinion that the general practice was as you have stated, it still remains uncertain, even during the St. Paul & Pacific period, how much, if any, of the cost of the road was derived and charged to operating expenses?

A. That is an uncertain quantity, with reference to my not being in active service at that time, but it is also true, as I stated, I have examined certain roads which were built in the same territory during that time, there is no question of it appearing as being charged to construction, and from that I inferred the other.

Q. I don't care to debate the question further.

A. That was merely intended as an answer to the criticism that at that time I was not in active business and was not competent to state it, and I wanted to state the grounds of my stating so and the grounds of my competency.

Q. But, to put my question again Mr. Hillman, (and we will leave out the St. Paul & Pacific period because that seems to be surrounded in a great deal of uncertainty) certainly since the Manitoba Company took the properties, or since that date, the cost of road, if the general practice has been followed by the authorities of that Company, has been, to a greater or less extent, paid for out of operating expenses. That is true?

A. There has been—

Q. Please answer the question definitely. That is true to a greater or less extent, is it not?

A. Yes.

Q. To the extent that the cost of road is so represented it is not covered by the figures contained in your Exhibits K-

A. That is correct.

Q. And to ascertain how much should be added to the cost of road to cover the amount of the cost that has been paid for out of operating expenses would require a re-examination of all of the operating expenses as they were charged from time to time during the period since 1879, would it not, and practically amount to a reclassification, in other words, of the operating expenses, according to a present rule to be applied?

A. That I couldn't say. I don't know how the accounts have been kept on the Great Northern road. It would be impossible to answer that question.

Recess until 2 o'clock P. M.

AFTERNOON SESSION.

Q. Since the adjournment, Mr. Hillman, have you made a computation which you stated you would make during that interval?

A. No, sir; I have not been able to get into the office very promptly on account of them being away, and I have not made it in full. I have only results in two years here, which I could quote you if necessary, but the intervening years I haven't here. I have the year 1883-4 and the next one, which shows plainly in the record was the year 1887-8. The others I would have to examine my papers considerably more at length.

Q. Well, I wouldn't care for any partial view of the matter, and therefore I will not press the matter further at this time.

Mr. DURMENT: You were asking with reference to the unbilled freight matter now?

Mr. HOLDEN: Yes.

Mr. DURMENT: Well, we may want him to look that up ourselves unless the matter is closed this afternoon. If the matter is going over until tomorrow I may want to go into it.

Mr. HOLDEN: I think that is all the questions I have to ask Mr. Hillman.

RE-DIRECT EXAMINATION.

By Mr. DURMENT:

Q. You were asked by Mr. Holden some questions with reference to the cost of carrying company's freight and with a particular view, as I understood it, of determining whether certain unbilled freight expenses so charged on their books might not have been charges for carrying company freight and therefore properly chargeable to cost of road. You were at noon to look up and find out whether they had during the period you examined carried accounts on their books covering Company freight; you said that during the noon period you examined only two years I think, 1884 and 1887; is that right?

A. 1884 and 1888.

Q. What did you find the situation for those two years as to the unbilled freight account or the account covering cost of transportation of company freight?

A. I found in the year 1883-4 that freight earnings had been credited with $314,803.71.

Q. For what?

A. For carrying company freight, and that this amount had gone into the cost of road and equipment in addition to this unbilled freight account which was carried in through operating expenses.

Q. What did you find as to the year 1888?

A. I found that the total amount which was charged to cost of road and equipment through freight earnings for that year was $776,258.92, of which $355,000 instead of the item which I have, $335,000 marked here on my books, and I will have to acknowledge an error of $20,000 in that, but as it is against the State in its contention we can overlook that small amount, was handled through the unbilled freight, and that there was

charged directly as freight and other expenses of handling $421,258.92. This is the item which I spoke of in the prior testimony as some four hundred and odd thousand dollars being taken up as a freight charge.

Q. That was not included in your unbilled freight items in your Exhibits K?

A. No, sir.

Q. I would like you, if you can do it between now and tomorrow morning, to make a list or a statement of the items for carrying company freight which were charged to the cost of road and not included in the items that you have in your Exhibits K as unbilled freight, for each year.

Col. CLOUGH: Have him refer to the book and folio.

Mr. DURMENT: Yes, and in doing so, refer to the place where your information is found.

A. I will do that as far as my notes which I took off concerning construction items will indicate that. It may be that in following that particularly that they may be included in an item which I have often put there as "other expenses" and I would be unable to follow that.

Q. Then the data you have may show it and may not?

A. I will follow it as far as possible from the data; yes, sir.

Mr. HOLDEN: Will you ask him to give a reference to the sources of his information.

Mr. DURMENT: And give a reference in the statement to the sources from which you obtain the information, as far as you can.

Mr. HOLDEN: What I had in mind, if Mr. Hillman can now give a reference to the record or book or account from which he takes these figures, it would be helpful to us.

Col. CLOUGH: That is, for the two years?

Mr. HOLDEN: For the two years he has given his testimony about just now.

WITNESS: You would find those earnings of freight which I

have mentioned, $314,803.71 in the year ending June 30 1884, in construction record, in that part of this record running up to December 1, 1883. I can quote the names of the extensions as shown on the record, if it would be any assistance to Mr. Drew.

Mr. DREW: You could, or give them to me.

WITNESS: Durbin extension No. 1, $3,196,78, freight earnings; Grand Forks north, $44,630.70, freight earnings; Grand Forks west, $65,675.98; Minneapolis & Northwestern, $68,507.99; Sauk Rapids & Northern, $56,631.48; St. Cloud & Duluth, $72,918.06; Everest & Casselton branch, $3,242.72.

Mr. HOLDEN: That only covers the first year.

WITNESS: 1887-8, Benson to Appleton, total freight including unbilled freight and other operating expenses, $54 338.12; Cando branch, $7,762.59; Moorhead Southeast, $38,812.95; Park River north, $38,812.95—the exact duplicate, the exact amount of the preceding entry. Minot west, $636,532.31; making a total of $776,258.92. Deducting the $335,000 which I have mentioned on Ex. K-2 (which should have been $355,000) would leave the item for operating expenses charged to construction $421,258.92. As you must remember, according to the method of handling this unbilled freight, it was passed through operating expenses when it was handled, although it was not an operating expense; therefore, deducting that from the total, leaves, $421,258.92 accruing to construction from operating expenses and representing the cost of handling.

Q. That is cost of handling company's freight?

A. Construction material; yes, sir.

Q. Well, that brings up the one question I want to ask: it seems from your testimony in this case that it was customary in the case of this road to carry to the cost of road the cost of transportation of Company freight in the construction of new lines or Company's work; did you find that the books also kept a separate account of the cost of carrying this Company's

freight, so that you could segregate it from the other operating expenses?

A. No, sir; that would be an estimated cost probably. At the same time, I made no investigation as to whether freight had been charged on Company material, and handled in that way, but as there was no charge to construction account save in this first year for freight earnings to the amount that I mention of $314 803.71, I concluded that in this latter year they had charged as expense and credited to the operating, rather than making a credit to earnings.

Q. Well, if I understand the system of bookkeeping, then, and the facts, the cost of carrying Company's freight is included in the general costs of operation which are carried upon their books as paid for cost of operation?

A. Yes, sir; necessarily.

Q. But what they charge as the cost or value of the carrying of the freight goes into construction as a credit to construction?

A. Is a charge to construction and a credit to operating expenses. The operating expenses are a fixed sum, determined by their pay rolls, material disbursed and vouchers for other payments debited directly to operating accounts.

Q. What I am getting at is this: that although the cost of carrying the freight or a sum to cover that, is charged up to construction, it is really paid out of the earnings of the road as part and parcel of the operating expenses of the road.

A. Yes, sir; that is right, with the exception that as a credit to operating expenses we would have the amount charged to construction, and our operating expenses would be reduced by that amount, but the original cost was of course included in operating expenses; while in the case of my unbilled freight, there was never any such expense incurred in operation.

Q. Well, if I understand it, that in case of Company freight actually transported and passed to the construction account,

it is not paid from the proceeds of bond sales or stock, or capital, but is paid from the earnings of the road so far as it is paid for at all—the cost of handling?

A. There is no actual money passed, no, sir.

Q. No, but they use their engines, they use their coal, they pay their engineers and their brakemen and their switchmen for their work in handling this Company's freight the same as they do the freight of a shipper?

A. Yes, sir.

Q. Now, what I want to get at is this: this cost of actually carrying the Company freight which they do in fact pay out, is it paid from earnings of the Company, or is it paid from capital as a capital account?

A. If that freight or cost of handling freight is charged to construction and then credited back to operating expenses. the expense would then be stood by the construction account, which we would suppose was paid from the sale of securities. If, however, no charge was made for that, it would leave the operating expenses stand as carrying the freight for nothing and the charge would be against operating expenses, and it would increase the operating expenses by that much.

Q. In the case of the two years you have mentioned where you had the figures, how was it done?

A. In the first year there were earnings charged to construction, which supposedly would be of a sum sufficient to take care of the expenses; that is, to the extent of $314,000. In the next year, instead of crediting to earnings I don't mean the next year, but the next year mentioned, the year 1887-8, instead of crediting an earning account which would offset the expenses of carrying, the amount was credited directly to operating expenses and construction debited—always excepting in these statements the unbilled freight account which was an extra item to any that I have mentioned here.

Q. Well, now, then, as a matter appearing from the books,

would the first year have been paid out of capital account or out of earnings of the road, the first year you have mentioned?

A. The first year would be paid out of capital account, but it would be paid in through the earnings, a freight earning to the extent of $314,803.71. In the second year, it would be paid out of capital account to the extent of $421,258.92, but it would be carried directly as a credit to operating expenses and not as a credit to earnings. It would reduce the operating expenses in the second year; it would increase the earnings in the first year. The net result would be the same.

Q. Then, if I understand you correctly, in neither of these two years was this cost of carrying the Company's freight paid out of or as part of the cost of operation, that is, paid out of the earnings of the road?

A. No, sir.

Mr. DURMENT: That is all I have with reference to the Great Northern road, except I would like to get the facts as to the other years as to this Company freight matter which they have gone into. I would like to know what the facts are; I don't know whether they are for us or the other way. And we can do that tomorrow morning at 10, or we can have him make up a statement, if you want, and put it in the record without calling him again.

Mr. HOLDEN: I think that would be better.

Col. CLOUGH: Let him put it in.

Mr. HOLDEN: Make up a statement and let us see it.

WITNESS: I would want to again speak of this unbilled freight matter that it is handled so—

Q. Can you make up a statement tonight?

A. Yes.

Q. And give me a copy and them a copy tomorrow morning?

A. Of that?

Q. Yes.

A. Yes, sir.

Adjourned until Wednesday, January 26, at 2 P. M.

Federal Building, St. Paul, Minn., Wednesday, January 26, 1910, the hearing was resumed at 2 o'clock P. M.

Mr. DURMENT: Just before the adjournment last evening, I asked Mr. Hillman to go through his notes and find out in what other years, if any, that showed charges made directly on account of Company freight, as we were discussing yesterday under the years 1884-1888, and he tells me this morning that he cannot add anything to what he gave us yesterday; that in taking off the figures in making the original investigation he did not have that matter in mind and did not give instructions to have it abstracted, but he found these two years in the information that he had taken off, and that there might be as to other years, but he finds there is something taken off the books in his notes for the other years which he can say definitely or clearly was on account of Company freight. There are some other things taken off in a general way that might or might not include some of it, but he cannot say, and, for that reason, I have not furnished the list which was expected. That is the situation, isn't it, Mr. Hillman?

Mr. C. W. HILLMAN: Yes, sir.

JOHN G. DREW,

sworn on behalf of Complainants, testified:

By Mr. HOLDEN:

Q. Mr. Drew, you are the comptroller of the Great Northern Railway Company, are you not?

A. Yes, sir.

Q. How long have you been connected with the Company in its accounting department or otherwise?

A. Since June 1, 1899.

Q. That was your first connection with the Company or its properties?

A. Yes, sir.

Q. And what position did you hold at that time?

A. I was assistant to the comptroller until January 1, 1900; assistant comptroller from January 1, 1900, until January 1, 1902, and comptroller since that date.

Q. What knowledge have you, Mr. Drew, of the accounts of the Great Northern Company previous to your taking the office of assistant comptroller?

A. None whatever.

Q. Well, since this case has been on trial, have you had occasion from time to time to go back of the period when you began as assistant comptroller, into the earlier books of the Great Northern Company and of the predecessor company, the Manitoba?

A. Since receipt of the exhibits prepared by Mr. Hillman, I have gone back into the old records with the idea of verifying or checking up his figures as far as possible, during the short time allowed for the purpose.

Q. Since you were furnished with a copy of the exhibits marked K-1 to 9 inclusive, have you been able to make a complete check and examination of all of the items to which Mr. Hillman has directed attention either as an exception or otherwise?

A. I have checked up a good many of them, but I would not say that I had been able to make a complete examination of the accounts.

Q. From your general knowledge and experience in connection with your office, are you able to state under whose direction or in what manner the accounts of the Great Northern and the Manitoba companies were kept?

A. From the annual reports filed it is seen that their accounts were under the jurisdiction of Mr. S. S. Breed until some time during the fiscal year 1883-84; beginning with that year, and until the fiscal year 1889, A. H. Bode was comptroller, who was succeeded some time during the fiscal year 1888-9 by C. H. Warren.

Q. These three gentlemen that you have named were each at the head of the accounts of the Manitoba Company for the respective periods indicated in your answer?

A. That is my understanding.

Q. And is it your understanding that during the period when the one or the other was in the office of comptroller of the Company, the accounts, generally speaking, were kept under his authority and direction?

A. That is my opinion.

Q. And, if I understand you, Mr. Breed seems to have severed his direction over the accounts about the year 1884?

A. Well, he was still carried in the reports as auditor, but I assume from the fact that Mr. Bode was shown as comptroller that the latter was in charge of the accounts and the former his subordinate.

Q. In other words, there seems to have been a change in the authority over accounts about the year 1884?

A. Yes, sir.

Q. Is it also true that there seems to have been a change in the authority over accounts about the year 1889 when Mr. Warren took hold?

A. Yes, sir.

Q. Now, have you prepared a statement or statements commenting upon some of the matters to which Mr. Hillman has directed attention, for the purpose of testifying here this afternoon?

A. Yes, sir.

Q. Now, I wish, if you have any notes from which you want to testify, that you would make use of them and proceed with what matter you have first to draw attention to.

A. I have not made any notes with reference to Mr. Hillman's Ex. K-1, but it has occurred to me that inasmuch as the two million dollars odd which he says have been spent by George Stephen and associates, that inasmuch as that amount

was disbursed after the St. Paul, Minneapolis & Manitoba Railway Company took charge of the property, that that amount is shown in what might be termed the wrong period. There seems to be a reimbursement of the amount spent on the property after it became the property of the St. P. M. & M.

Q. Well, now, what is the deduction from that fact with reference to the comment that has been made upon the capitalization of the Manitoba Company?

A. Well, the books do not show very much about that, and we can only surmise that the original capitalization of the St. P. M. & M. was issued on the understanding or some understanding that this amount would be expended on the property and that that amount is in fact included in the original St. P. M. & M. capitalization. It, however, would not have any other effect upon Mr. Hillman's total figures than merely transferring from one period to the other.

Q. Your testimony on that subject is a mere deduction which it seems to you to be fair to make from the state of the records as shown on Ex. K-1?

A. Yes, sir.

Q. Now, taking up Ex. K-2, will you proceed with such matter as you have in mind in reference to that?

A. The total of the amount shown in columns 1 and 2, aggregating $129,396,665.30, agrees with the books of that Company, as cost of road and equipment June 30, 1907. The items to which exceptions are taken, as shown in the third column, amounting to $13,731,339.39, as I make it, may be summarized as follows:

The MASTER: What are the footings you have of the first and second columns?

WITNESS: $129,396,665.30.

Q. That is the sum of both the first and second?

A. The sum of the two added together.

The MASTER: That is the real property and the equipment together?

WITNESS: Yes sir.

Q. Mr. Hillman's footings of the third column seem to be $13,700,339.39. Your addition of that column differs with his result, does it?

A. To the extent of $31,000.

Q. The difference is a question only of addition, is it?

A. Yes, sir; apparently.

Q. Now, proceed, Mr. Drew.

A. It may be summarized as follows: (1) Discount on bonds, $2,481,710.32; (2) Proceeds from land sales, $3,382,000; (3) Unbilled freight, $3,217,269.30; (4) Interest, $355,080.67; (5) Equipment, etc., $548,660; (6) Material from Hutchinson Line, $97,596.20; (7) Inventory adjustment, $500,000; (8) Profit and loss, $3,149,022.90. Total, $13,731,339.39.

Item 1, discount on bonds $2,481,710.32. The exception taken to this charge appears to be a matter of opinion. The discounts, excepting $48,000 on the sale of $2,400,000 on Dakota extension bonds in 1880 and 1881 at 98, are all on account of Montana extension and Consolidated Mortgage bonds. It was not only customary at the time these charges were made to charge discount on bonds to cost of construction, but the practice was recognized and perpetuated by the Interstate Commerce Commission in their "Classification of Construction Expenses," issued August 24, 1897, which was read into the record yesterday.

Q. When was that classification changed?

A. July 1, 1907. This classification was in effect until July 1, 1907, when a new classification was issued, changing the method of handling charges of this character, which I am advised by a member of the conference committee of accounting officers, was the personal opinion of Prof. H. C. Adams, in charge of statistics and accounts of the Interstate Commerce

Commission, and was opposed by the railway accounting officers of the conference committee. It is, nevertheless, a cost, and this classification question relates only to the proper method of paying for it.

2. Proceeds from land sales, $3,382,000. This is also a matter of opinion. Mr. Hillman's contention being that as the land grant was a part of the property purchased with the issue of $31,000,000 securities by the St. P. M. & M. Ry. Co., the proceeds resulting from the sale of the lands should be credited back to "cost of road." During the earlier period of the Manitoba books and apparently down to the time Mr. Warren assumed charge of the accounts,—

Q. That was in 1889, as you have already testified?

A. Some time during the fiscal year ending June 30, 1889; I don't know the exact date. (Continuing)—it seems to have been the opinion of the accounting officers in charge that proceeds of land sales should be credited to "cost of road." During the first year of Mr. Warren's connection with the accounting department, there seems to have been a change of opinion and the credits that had been previously made to the account Cost of Road from this source were reversed. Subsequently there appears to have been a further change of method in that regard and it appears from the face of these accounts that the changes were due to a difference in opinion by different accounting officers.

Q. Now, then, the next item is that of unbilled freight.

A. (3) Unbilled Freight, $3,217,269.30.

Q. Proceed to state what you have prepared as an analysis of that account.

A. Unfortunately, there are no details on the books which make it possible to make any analysis of this account. It is presumed to represent the transportation of construction material in connection with lines under construction over lines which had been turned over for operation. There is no question

that the lines under operation should have received credit for such transportation and that it was proper to charge same to the cost of the constructed lines. The amount of these charges would, of course, depend largely upon the mileage constructed, the length of the haul, the weight of the material and the rate to be applied, etc. The amounts excepted to by Mr. Hillman were credited to freight earnings or profit and loss and charged to the construction of new lines between 1883 and 1889, excepting the item of $382,009.30 in 1889 which was the full charge during that year, to which various credits from land grants were applied; the balance, $218,372.98, was charged to profit and loss on February 1, 1890, and so did not enter into the cost of the road. No reasons appear for not charging this amount to the cost of the road. The fact that the amount was charged to an account against which certain land grant receipts were credited does not, however, indicate the amount charged for transportation of Company material was excessive or improper; it simply indicates a change of method, the reasons for which the books do not disclose. The figures testified to by Mr. Hillman yesterday, showing charges to construction amounting to $314,803.71, appear, as well as an additional item covering the Red Lake and Lake of the Woods Railroad of $23,196.29, making a total of $338,000, appear on the books during the fiscal year ended June 30, 1883, and is prior to the date the account unbilled freight was started on the books, the first entry I find being dated July 31, 1884.

Q. Just a minute. Now, Mr. Hillman stated yesterday that that item, which he gave as $314,803.71, was taken from the construction record running from December 31, 1883, and when was the date you say that the last charge on that account was made?

A. The entries charging the construction of the different lines with this amount were dated June 30, 1883.

Q. So that it is your statement that this charge or any of

the items which go to make it up were not made during any period when there were charges on account of unbilled freight?

A. That is my understanding of it; yes, sir.

Mr. DURMENT: Now, he has already given the date as June 30, 1883?

WITNESS: Yes, sir.

Mr. DURMENT: And said that the unbilled freight account started—when did you say?

WITNESS: July 31, 1883.

Q. Now, Mr. Hillman also spoke of another set of figures, year ending June 30, 1888, I think it was; what have you to say in reference to those?

A. Under date of June 30, 1888, an entry was made in the books of the Manitoba Company charging construction of the various lines mentioned by Mr. Hillman with $776,258.92. Of this amount $335,000 was credited to the account Unbilled Freight, representing the amounts debited to that account during that fiscal year. The balance of the amount, $441 258.92, was credited to operating expenses.

Q. Now, if you have the journal voucher, or a copy of it, relating to that matter, I wish you would read it into the record.

A. "Journal Voucher, St. Paul, Minneapolis & Manitoba Railway Company, June 30, 1888. Sundries. Dr. to Sundries. Benson & Appleton, $54,338.12; Cando Branch, $7,762.59; Moorhead Southeastern, $38,812.95; Park River North, $38,-812.95; Minot West, $636,532.31; Operating Expenses, $441,-258.92; Unbilled Freight, $335,000. (The last two items being credits, the former items being debits.) For Transportation of Construction Material for use on Above Lines, also for use of Engines and Cars, Labor Picking up, Sorting and Loading, and Inspecting Rails, Ties and Proportion Share of Legal and Other General Expenses applicable to these lines."

I may say further, in connection with this amount of $441,258.92 that it, together with other items aggregating $750,000, were subsequently charged to this account Operating Expenses, and credited to a fund for additions and betterments, to which account charges were made subsequently for additions and betterments.

Q. You stated that this item of $335,000 unbilled freight were the charges pertaining to that fiscal year?

A. Yes, sir.

Q. I understand from that, that that item does not include anything on account of unbilled freight for previous years?

A. No, sir.

Q. Are there similar entries for the previous years during which unbilled freight is shown on the books?

A. There was a similar entry for each fiscal year closing out the account unbilled freight.

Q. Now, then, I would like to ask you, Mr. Drew, whether between the period 1883 and 1888 (fiscal years) the books of the Company show any charges for the transportation of construction material other than the unbilled freight charges which you have referred to.

A. Not that I have been able to find; that is, over the Company's lines, over the Manitoba Company's lines. There may have been freight charges covering the transportation of material east of here.

Q. But I mean the lines that are the subject of Ex. K-2.

A. No, sir; I was unable to find anything.

Q. Examination has been made, has it not, for that purpose?

A. Yes, sir; I had a subordinate go through with that end in view, and I looked over some of the lines.

Q. And this last item of $776,258.92, state whether or not that was made before the period when the making of unbilled freight charges was changed to a different method.

A. That amount was included in the unbilled freight charges, being for the fiscal year ended June 30, 1888.

Q. Is that the last entry on the books, in which unbilled freight was made?

A. That is the last entry on the books where the unbilled freight was charged to cost of road.

Q. Now, those dates, 1883 and 1888, are approximately coincident with the change in the accounting officers of the Company referred to earlier in your testimony, are they not?

A. It seems to be during the administration of Mr. Bode.

Q. And the entry of Mr. Warren in 1889 is coincident with the change in the method of stating freight charges on construction material?

A. Yes, sir.

Q. Have you computed the amount during that period charged to the cost of road on account of freight charges on construction material?

A. Yes, sir.

Q. Will you give the amount?

A. I have made the amount $3,787,718.47, including the amount that was credited direct to freight earnings or through the unbilled freight account, and including in that account the two items referred to by Mr. Hillman in his column of exceptions as Equipment which appear to have been transferred subsequently to cost of road, as testified to by him.

Q. And I may have misstated the dates, so I wish you would state between what dates those items were charged.

A. That is the total charge that I find on the books to June 30, 1888, for freight on construction material.

Q. Now, then, can you state the amount charged to the cost of property during the same period?

A. The amount charged to cost of property during the fiscal years ending June 30, 1881 to June 30, 1888, appears to have been $41,233,256.57.

Q. Have you compiled or had compiled a statement of the main-track mileage of the Great Northern Railway Company (which, of course, refers to the main track and mileage of the predecessor, the Manitoba Company) including proprietary companies showing the lines added each fiscal year, down to June 30, 1908?

A. Yes, sir.

Q. That statement begins with June 30, 1880?

A. Yes, sir.

Mr. HOLDEN: I would like to offer this as an exhibit and have it copied into the record.

Mr. DURMENT: Let us have a copy of it.

The statement was marked Complainant's Ex. 57-Drew.

Mr. HOLDEN: I offer in evidence the statement marked Complainant's Ex. 57-Drew, referred to in the last answer of the witness. Ex. 57 is as follows:

STATEMENT OF MAIN TRACK MILEAGE OF THE GREAT NORTHERN RAILWAY COMPANY, INCLUDING PROPRIETARY COMPANIES, SHOWING LINES ADDED EACH FISCAL YEAR FROM JUNE 30, 1880, TO JUNE 30, 1908.

	Miles.	Miles.
June 30, 1880, St. P. M. & M.		
St. Paul to St. Vincent.....	394.57	
	3.28	
E. Minneapolis to Moorhead.....	258.15	656.00
June 30, 1881, St. P. M. & M.		
Morris to Brown's Valley.....	47.00	
Wayzata to West end of Lake Minnetonka	6.00	
Breckenridge to Durbin	47.93	
	3.28 (red)	
Moorhead to Grand Forks.....	75.73	
Crookston to Ojata	36.10	209.48
		865.48

June 30, 1882, St. P. M. & M.			
Grand Forks to Grafton	39.84		
Ojata to Larimore	17.02		
Durbin to Portland	52.15		
Ripon to Hope	29.61		
Carlisle to Elizabeth	3.70		
Minneapolis to Clearwater	50.19		192.51
			1057.99
June 30, 1883, St. P. M. & M.			
Correction Mileage St. Paul to St. Vincent	1.35	(red)	
East St. Cloud to Sauk Rapids	1.94		
Breckenridge to Portland	.80		
Larimore to Devils Lake	61.00		
Everest to Mayville	45.52		
Clearwater to St. Cloud	12.77		
St. Cloud to Hinckley	66.51		
Sauk Center to Browerville	25.75		
Fergus Falls to Pelican Rapids	21.37		
Grafton to Boundary at Neche	40.32		274.63
			1332.62
June 30, 1884, St. P. M. & M.			
Hamline to University Switch	3.34		
Moorhead to Halstad	30.09		
Shirley to St. Hilaire	21.61		
Browerville to Eagle Bend	10.23		
Sundry Corrections in Mileage	2.13	(red)	67.14
			1399.76
June 30, 1885, St. P. M. & M.			
Mayville to Portland Jct.	4.82		
Park River Jct. to Park River	34.78		
Portland to Junction east of Larimore	32.18		
Sundry Corrections in Mileage	.85	(red)	70.93
			1470.69
June 30, 1886 St. P. M. & M.			
St. Cloud to Richmond	20.00		
Devils Lake to Church's Ferry	18.87		
Correction in Mileage	.11	(red)	38.76
			1509.45

June 30, 1887, St. P. M. & M.			
Richmond to Willmar Jct.....	35.05		
Church's Ferry to Minot	98.93		
Hutchinson Jct. to Hutchinson...	53.13		
Elk River to Milaca	31.80		
Tintah Jct. to Ellendale.....	104.32		
Rutland Jct. to Aberdeen	64.00		
Rugby Jct. to Bottineau.....	38.66		
Sundry Corrections	.23	(red)	425.66
			1935.11
June 30, 1888, St. P. M. & M.			
Evansville to Tintah	32.03		
Benson to Watertown	91.60		
Minot to Sun River.....	549.26		
Park River to Langdon.....	39.10		
Junction to Town of Great Falls.	1.82		
Sundry Changes	.87	(red)	712.94
			2648.05
June 30, 1889, St. P. M. & M.			
Moorhead to Wahpeton.....	42.91		
Churches Ferry to St. Johns.....	55.21		
Carman to Fosston	44.69		
Great Falls Smelter Line.....	5.33		
Great Falls to Junction with Sand Coulee Line	1.28		
Johnstown Branch	.77		
North St. Cloud Branch.....	2.53		
Extension of Willmar to St. Cloud Line	.80		
	153.52		
Less Sundry Corrections.... .08			
Line Hamline to Minnesota Transfer 2.60	2.68		
	150.84		
Willmar & Sioux Falls Ry.....	146.91		
Duluth, Watertown & Pacific Ry.	69.84		367.59
			3015.64

June 30, 1890, St. P. M. & M.			
Great Falls to Boston & Montana Smelter	4.27		
Less Tracks Removed, Breckenridge Jct. to Barnesville Jct.	24.49 (red)	(red) 24.22	
			2991.42
June 30, 1891, St. P. M. & M.			
Grafton, N. D. to Cavalier, N. D.	31.71		
Connection with Great Falls & Canada Ry.	1.26		
Montana Central Ry.	192.54		
Minneapolis Union Ry.	2.48		
Eastern Ry. of Minnesota	72.39		300.38
			3291.80
June 30, 1892, St. P. M. & M.			
Eagle Bend to Park Rapids	54.52		
Hendrum, Minn., to Alton, N. D.	10.38		
Montana Central Ry.			
Allen to Neihart and Barker	67.03		
Sundry Changes	.07		
	67.10		
Less Silver to Marysville Removed	6.42	60.68	125.58
			3417.38
June 30, 1893, St. P. M. & M.			
Pacific Jct. to Everett	818.83		
Thief River Falls, Minn., to Red Lake Falls, Minn.	17.72		
Montana Central Ry., Mountain View Branch	3.38		
Sundry Corrections	.15		840.08
			4257.46
June 30, 1894, W. & S. F. Ry.			
Sioux Falls to Yankton	58.34		
St. P. M. & M., Addison, N. D., to Rita, N. D.	11.78		
Main Tracks in Minneapolis	.33		70.45
			4327.91

June 30, 1895, Pacific Coast Lines....	159.10		
Great Falls & Canada Ry., Connection Removed	1.26		157.84
			4485.75
June 30, 1896, Main Tracks in Minneapolis	.03		
Casselton to Ripon cut off.....	4.35		
	4.38		
Tracks, Everett & Fleming Removed	4.75	(red)	.37
			4485.38
June 30, 1897, St. P. M. & M.			
Halstad to Carman	32.23		
Hope to Aneta	28.07		
M. C. Ry., East "Y" at Helena..	.14		60.44
			4545.82
June 30, 1898, St. P. M. & M.			
Langdon to Hannah.....	21.06		
Cavalier to Walhalla.....	16.13		
Changes of Line	.36		
	37.55		
Less Carlisle to Elizabeth Removed	3.52		
	34.03		
Eastern Ry. of Minn. Purchase D. S. & W. Ry.	99.94		
M. C. Ry., Cottonwood Branch constructed	4.95		138.92
			4684.74

June 30, 1899 St. P. M. & M.			
Extension "Y" at St .Cloud.....	.12		
New "Y" Track at Carman.....	.98		
Extension of St. Cloud & Willmar line at St. Cloud	.65		
Extension of Line at Burwell....	.68		
	2.43		
Less Changes of Line	.21		
	2.22		
E. Ry. of M. Correction of Mileage, D. S. & W. Ry.....	.28		
Line D. M. R. & N. R. R. Purchased	49.47		
Deer River to Fosston Construction	98.59		
Bemidji Jct. to Cloquet Construction	27.53		
Hinckley to Fridley, Construction	64.72		
M. C. Ry., Extension Cottonwood Branch	.26		
P. R. & L. Ry.	49.04		292.11
			4976.85
June 30, 1890, W. & S. F.			
Garretson, S. D., to Sioux City, Ia.	96.00		
South Sioux City to O'Neill, Neb.	129.16		
Line of Sioux Falls Terminal Purchased	3.02		
	228.18		
Less Correction in Mileage at Sioux Falls	.02		
	228.16		
St. P. M. & M. Tracks Removed at St. Vincent	2.94		
Portion Line Halstad to Alton	1.33		
	4.27		
Less Line Constructed:			
Quincy & Columbia River. 1.23			
Verona & Marias..... 1.33	2.56	1.71 (red)	

E. Ry. of Minn., Tracks Removed, Brace Jct. to Cloquet 11.32			
Correction D. M. R. & N. R. R. Mileage ..... .44			
	11.76		
Less: Line Purchased Superior, Belt Line & Terminal Ry. 5.87			
Stevenson Mine Spur Built.. 3.31			
Clark Mine Spur ..... .61			
	9.79	1.97 (red)	
Seattle & Montana R. R. Sedro Branch Removed		7.71 (red)	
Spokane Falls & Northern Ry. System		207.11	423.88
			5400.73
June 30, 1901, E. Ry. of Minn.			
Stony Brook Line Constructed...		46.49	
Barclay Jct. to Virginia.....		18.78	
Track at Brace Jct. Removed.....		.13 (red)	
St. P. M. & M., Switch Back over Cascade Mountains Removed 12.66			
Hopkins to St. Bonifacius Removed 19.66			
Portion Line Halstad to Alton Removed ..... .55			
Sundry Changes of Line Reduction 1.95			
Correction in Mileage..... .06		34.88 (red)	
Changes of Line Teton to Tunis..		3.61	
New Line Through Spokane.....		4.74	
New Line Through Cascade Tunnel		3.52	
New Line Through Everett.....		3.63	
Extension of Spring Park Line to St. Bonifacius		7.95	53.71
			5400.73

June 30, 1901, M. C. Ry.			
Fairground & Red Mountain Branches at Helena Removed and change of Line Boulder Hill		1.44 (red)	
S. F. & N. Ry., Mileage Removed.		4.08 (red)	
S. & M. Ry., Mileage Removed....		4.47 (red)	43.72
			5444.45
June 30, 1902, S. & M. Ry.			
Anacortes to Rockport.....		54.42	
New Line at Everett, Wash.....		3.32	
D. & G. N. Ry., Bottineau to Sonris, N. D.		12.72	
Lakota to Edmore		27.72	
St. P. M. & M., Mileage Reduced by Change of Line between Portage & Great Falls	3.43		
Edwall, Wash.	.01		
Harrington, Wash.	.22		
Wenatchee River.....	.13		
E. Ry. of Minn., Tracks between Brace Jct. Minn., and Pokegama Jct. Wis. removed	6.26	10.05 (red)	
Mont. & Great Northern Ry. Jennings to International Boundry		50.98	
Great Falls to International Bdy.		134.37	
Crows Nest Southern Ry. International Boundary to Morrissey		48.47	
Washington & Great Northern Ry. Vancouver, Victoria & Eastern Ry. & Nav. Co.....		59.58	
Marcus to Grand Forks and Republic		16.29	397.82
			5842.27

June 30, 1903, St. P. M. & M. Ry.			
St. Vincent to Boundary.....	2.61		
Change of Line, Rugby, N. D....	.04		
E. Ry. of Minn., Mine Spurs.....	14.53		
Corrections in Mileage.....	.05		
Tracks Removed:			
Saunders to Pokegama..... 2.12			
Barclay Jct. ..... .12	2.24	(red)	
S. & M. Ry. Fairhaven to Belleville	18.82		
New Tracks, Everett	.18		
Old Line, Samish Lake. Removed.	9.16	(red)	
M. & G. N. Ry., Correction in Mileage	.04		
W. & G. N. Ry., Republic—Eureka Gulch	9.80		
V. V. & E. Ry. & N. Co. East "Y" at Grand Forks	.21		
M. C. Ry. Red Mountain Branch Removed	1.14	(red)	
C. N. S. Ry. Correction in Mileage	.32		33.42
			5875.69
June 30, 1904, E. Ry. of Minn.			
Mine Spurs	3.95		
Kelly Lake to Exmore	9.69		
Sundry Changes	.36	(red)	
D. & G. N. Ry., Souris to Westhope	16.41		
Granville to Mohall.....	46.97		
S. & M. Ry. New Inshore Line, Bellingham	1.95		
M. C. Ry. Barker Branch Removed	10.79	(red)	
Fairground Branch Relaid.....	.68		
C. N. S. Ry. Morrissey Branch sold	4.77	(red)	
St. P. M. & M. Ry. Change of Line Naples	.19	(red)	
M. & G. N. Ry., Change of Line, Rexford	.14	(red)	63.40
			5939.09

June 30, 1905, St. P. M. & M. Ry.			
Columbia Falls to Rexford	69.18		
Connection N.P.Ry. Redlake Falls	1.68		
New "Y" at Larimore	.21		
Tracks Melbourne to Jennings Removed	29.03	(red)	
E. Ry. of Minn. Mine Branches net	.39		
D. & G. N. Ry., Michel to Sherwood. N. D.	14.85		
Edmore to Munich	24.87		
Minn. & G. N. Ry., Thief River Falls to Greenbush	41.09		
C. N. S. Ry., Swinton to Fernie, B. C.	9.82		
V. V. & E. Ry. & N. Co., Grand Forks to Phoenix	24.62		
Grand Forks to Granby Smelter	4.75		
S. & M. Ry. Outshore Line, Bellingham Removed	1.56	(red)	
Cokedale Branch Removed	3.82	(red)	
New Tracks Anacortes	.97		
New Line Through Seattle Tunnel	1.20		159.22
			6098.31
June 30, 1906, D. & G. N. Ry.			
Towner to Maxbass	46.13		
York to Thorne	34.68		
Westhope to Antler	12.76		
Munich to Sarles	20.53		
St. Johns to International Bdy	3.88		
Ellendale to Forbes	13.36		
E. Ry. of M. Sundry Mine Spurs.	7.80		
Sundry Changes to Mine Spurs	2.13	(red)	
Change of Line Boylston	.05	(red)	
S. & M. Ry. Water Front Tracks Anacortes	2.64		
Line through Seattle Tunnel	1.06		
Old Water Front Line Transferred to Side-track Mileage	.95	(red)	
W. & G. N. Ry., Curlew to Ferry.	15.52		
St. P. M. & M. Ry. Extension Ellendale, N. D.	.75		
Connection N. P. Fargo	1.33		

Extension Line Crookston.....	.06		
Shirley to Ives, Removed	7.52	(red)	
Melbourne to Lakeview Removed.	1.83	(red)	
Change of Line, Crater Removed.	.15	(red)	146.87
			6245.18

June 30. 1907, E. Ry. of M.

Stevenson Mine Spur.....	1.67		
D. & G. N. Ry., Thorne to Dunseith	7.61		
Change of Line Towner, N. D....	.03	(red)	
B. S. & H. B. Ry. International Bdy. to Brandon	69.45		
W. Ry. of M., International Bdy. to Portage la Prairie.....	77.01		
V. V. & E. Ry. & N. Co., Midway to Molson	28.89		
W. & G. N. Ry. Molson to Oroville	27.82		
St. P. M. & M. Ry. Neche to Bdy..	.64		
Cut-off Schurmeier to Grand Forks 4.52			
Track Schurmeier to Grand Forks Removed 4.74	.22	(red)	
Browns Valley to Lake Traverse.	1.92		
Wye Track Churchs Ferry Transferred from Sidetrack Mileage..	.22		
Tracks at St. Johns Removed.....	.23	(red)	
Wylie to Ives Removed.....	5.80		208.95
			6454.13

June 30, 1908, G. N. Ry.

Kelly Lake to Fermoy	23.40	
Extension Main Line Grand Forks, N. D.	.52	

Walhalla to International Bdy....	5.34		
Aneta to Devils Lake, N. D.....	57.72		
Berthold to Crosby	89.16		
Armington to Judith Gap.....	92.63		
Oroville to International Bdy....	20.64		
Kalispell to Somers, not heretofore included in Main Track Mileage	10.45		
Lucerne to Lakeview Removed...	11.86	(red)	
Line at Alton Removed.....	8.50	(red)	
Sioux Falls to O'Neill Sold.....	129.16	(red)	
Main Track Brook Park to Hinckley, Transferred to Second Track Mileage	8.20	(red)	
Sundry Minor Changes.....	.77	(red)	
M. Ry. of M. Bdy. to Morden.....	15.25		
G. N. S. Ry. Fernie to Michel....	20.98		
V. V. & E. Ry. & N. Co., International Bdy. to Keremeos.....	18.20		
Victoria Mine Spur	1.23		
Cloverdale to Port Guichon.....	14.81		
New Westminster to Vancouver..	17.28		
Corrections in Mileage	.06	(red)	229.06
Total June 30, 1908.....			6683.19
Add following lines:			
Duluth Terminal Railway			1.82
Minneapolis Western Railway			1.69
Union Terminal Ry.			1.28
Total Annual Report			6687.98

Q. Now, Mr. Drew, this statement Ex. 57-Drew, starts with the mileage as of June 30, 1880 of the Manitoba Company, and in the column at the right there appears to be 656 miles?

A. Yes, sir.

Q. And following through the exhibit the additions in the main track mileage year by year are shown?

A. Yes, sir.

Q. During the period that we have been talking about covered by the charges to unbilled freight, will you state the amount of mileage and approximately the location, if you can, of some of it that was constructed?

A. There appears to have been constructed during that period 1992.05 miles of main track, in addition to the sidings and other construction in connection therewith. Of this amount I have noted that 549.26 miles covers the construction of the line from Minot, North Dakota, to Great Falls, Mont., which appears to have been completed during that year.

Q. That was completed you say during the year ending June 30, 1888?

A. Yes; of course, it may have been under construction for several years prior to that time.

Q. Can you state the length of the extension that was completed that year? though I think you have already stated it to be 549 miles.

A. Yes.

Q. And if I am correct, you mean that that was a construction west from Minot?

A. Yes, sir.

Q. To Great Falls, 549 miles distant?

A. Yes, sir.

Q. Have you made or had made a computation from the records of the Company of the average revenue per ton per mile for the years embraced in this period during which unbilled freight charges appear?

A. Yes, sir.

Q. What was the average revenue per ton per mile received by the Company?

A. Average revenue per ton per mile received by the St. Paul, Minneapolis & Manitoba Railway Company during the period July 1, 1880, to June 30, 1888, was 1.6501 cents.

Q. Stated otherwise that was 16½ mills, was it not?

A. Yes, sir.

Q. What was the average revenue per ton per mile of the Great Northern Company for the year ending June 30, 1907?

A. .769 of a cent.

Q. In other words that, stated differently, is something over 7½ mills?

A. Yes. There is one statement I might make in connection with the amount $3,787,718.47 charged to construction during the period—that I have added $62,798.47 to Mr. Hillman's figures for the fiscal year ended June 30, 1886, his saying that amount is $801,000 for the reason that there appears to have been that much charged to cost of road and credited direct to profit and loss.

MR. DURMENT: That is in 1886?

WITNESS: Yes, sir.

MR. HOLDEN: Mr. How just states that he has looked it up, and I would like to have it appear in the record here that it is 526 miles from St. Paul to Minot; that is the present distance over the present road; whether that was the distance over the existing route at the time in question we don't know, but I merely want to get an approximate idea of the length of the haul.

Q. The last statement you were making to the item of three million and odd dollars is the sum total of the charges for transportation of construction material which you gave a little while ago as accrued between the years 1881 and 1888?

A. Yes, sir.

Q. Mr. Hillman, on Ex. K, takes exception to an item of $3,149,022.90 as arbitrary increase of cost of road to provide enough profit and loss to justify a dividend of 45 per cent to stockholders, paid in consol bonds.

A. June, 1884.

Q. Have you made any investigation of the records of the Company to obtain any further light on that transaction?

A. Yes, sir.

Q. I hand you what appears to be a copy of a journal voucher of the Manitoba Company, and ask you if that is a copy of the original journal voucher relating to this transaction.

A. Yes, sir.

Q. The entry upon the books relating to that matter, as I understand it, is a copy of the journal voucher?

A. It is.

Mr. HOLDEN: I would like to have that read into the record.

A. (Reading) "Journal Voucher, St. Paul, Minneapolis & Manitoba Railway Company, June 30, 1884. Cost of Railway and lands $3,149,022.90. Debtor to profit and loss, $3,149,022.90. For estimated value of amount expended from June 21, 1879, to June 30, 1883, for additions, improvements and betterments of St. P. M. & M. Ry. included and charged to operating expenses and now transferred to cost of the property, order of the general manager."

Q. Did you investigate further into the records of the Company to ascertain what action, if any, the board of directors took in reference to this matter?

A. I could find nothing further in relation to the matter in the books of account, but find that the entry was made upon authority of a resolution adopted by the board of directors.

Q. Have you a copy of that resolution before you?

A. I have.

Q. I wish you would read that into the record, omitting the certificate at the foot unless it is desired.

A. "On motion of Mr. Kennedy, seconded by Mr. Smith, the following preamble and resolution were adopted:

"Whereas the Company has recently acquired large and valuable properties and lines of railway which are not covered by its existing mortgages, and has made extensive improvements and additions to its other properties.

"Therefore be it resolved, that for the purpose in effect of reimbursing to and dividing among the stockholders the cost and value thereof, to the extent of nine millions of dollars and of readjusting the securities of the Company, the stockholders of record on the books of the Company at the close of business on the 20th day of April 1883, shall have the privilege of acquiring from the Company bonds of the contemplated issue of May 1st, 1883, to the amount of 50 per cent of the stock then held by them respectively at the price of 10 per cent of the par value thereof; said bonds to be represented by scrip deliverable on the first day of May next, on the payment thereof at the price aforesaid, and such scrip to be exchangeable for said bonds at the office of the Company in New York on and after the 1st day of July next, upon its presentation in amounts of $1,000 or any multiple thereof."

Q. Will you proceed with your memorandum and comment on any further items which you have noticed.

A. (4) Interest, $355,080.67. This represents the amount charged to interest and discount by the St. P. M. & M. Railway Company, during the year ended June 30, 1883, and was charged to construction of Minnesota & Northwestern Railway, $171,022.84, St. Cloud & Duluth Railway $184,057.83. It is unquestionably proper to charge to the cost of lines under construction interest on the amounts advanced for such purposes, regardless of whether such advances are made from the surplus funds from operation, or are borrowed from some other source, the money is expended and the interest on it during the construction period is part of the cost of the new work. It appears

to be a fact that the St. P. M. & M. Railway Company were disbursing money in the construction of the above lines and that they did borrow funds and paid interest thereon.

Q. You say it appears to be a fact,—you mean by that from your examination of the books?

A. Examination of the books shows that the St. P. M. & M. Railway Company paid interest on its indebtedness to that amount; it appears to be borrow money.

Q. Now, the next item which you have relates to material upon the Hutchinson line. What have you to say as to that item—$97,596.20?

A. This item represents value of material recovered from track removed between Melbourne and Jennings, Montana, $97,596.20, and a balance on account of track changes on the Hutchinson line of $5, or a total of $97,601.20, which amount was reinvested in additions and improvements; that is, the cost of the following additions and improvements instead of being charged to the cost of the road were charged to the above accounts, namely, $5 account masonry abutments to bridge No. 16, Hutchinson line, and $97,596.20 account various masonry and concrete foundations and culverts on the main line in Montana. The deduction of this amount is clearly erroneous.

Q. I don't remember just where it was, but somewhere in Mr. Hillman's examination he had reference to certain Todd county lands, and my recollection of his testimony is that he claimed that the Todd county lands were a part of the land-grant,—I think if you can state what his contention is you can perhaps do it more concretely than I can. What have you to say about the Todd county land matter, and, in the first place, whether or not the Todd county lands were at any time, a part of the land grant of the Company?

A. I have looked the matter up and find that the Todd county lands or the lands referred to as the Todd county lands were not a part of the original land-grant and that they were purchased by the Company from outside sources.

Q. You speak of the original land-grant now or any land-grant?

A. Any land-grant which the Manitoba or any of its predecessors were interested in.

Q. And the lands were purchased from private parties by the Manitoba Company?

A. Yes, sir.

Q. Your next comment relates to inventory adjustment of $500,000. What have you to say about that?

A. This account cannot have any connection with the matter of "cost of steel over iron." The account "Cost of Steel over Iron" appears to be as follows: the cost of steel rail, angle-bars and bolts when purchased were charged to the account "Material Road Department" and when applied, that account received credit and the account "Cost of Steel over Iron" was debited.

Q. Wait a moment. When you say "applied" you mean when they were laid or used, do you?

A. Yes. This same account was credited with certain amounts for the iron rail and fastenings released, as the steel rail was applied and the account "Material Road Department" was debited, which again received credit when the iron rail was applied.

Q. Now, to state that in plainer English, what you mean is that this same account "Material Road Department" was credited when the iron rail and fastenings were taken up? you used the word "released."

A. Yes.

Q. As the steel rail was put down?

A. As the steel rail was put down the store department received credit for it and it was charged to the account "Cost of Steel over Iron."

Q. Now, then your final statement was that when the iron rail was again put down—you say "was applied"—when the

iron rail was again put down, the account, "Materia Road Department" again received credit?

A. If I said it that is the way it was.

Q. The point I make is, you made use of the term "applied" and "released"—that is plain to you but I don't know whether it is plain to the Master, it was not to me.

A. "Applied" means when the rail and the fastenings were laid in the track, and "released" means when the iron rail was taken from the track.

Q. Now, then, proceed.

A. I can restate that.

Q. I think if you would restate the substance of that paragraph it would be plainer.

A. The cost of the steel rail, angle-bars and bolts when purchased were charged to the account "Material Road Department"—which was, in effect, as I understand it, their store department—and when taken from the store department and laid in the track they credited the store department and charged the account "Cost of Steel over Iron." In laying the steel, they took up the Iron rail which had previously been laid in the track and credited that to the account "Cost of Steel over Iron" and charged it to Store Department. Then that was subsequently taken out of the store department, which was credited for it, and relaid into another piece of track, which was charged with it.

Q. Now, then, proceed—that is plain even to me.

A. The Company apparently had a line of operated road laid with iron rail and had other lines under construction for which it was necessary to purchase rail; that it did purchase steel rail, but instead of laying it on the new branch lines, laid it on the operated lines and took the iron released from the operated line and laid it on the newly constructed branch lines, the result being that it had the same amount of rails on all of its lines and charged at the same price as if it had laid the

new steel rail on the new branch lines.

The account "Cost of Steel over Iron" does not, as far as I have been able to locate, include any labor charges, which were undoubtedly properly charged to operating expenses. It would appear that the price at which the iron rail had been credited to the account "Cost of Steel over Iron" and subsequently debited through the account "Material Road Department" to the cost of new lines was deemed insufficient as compared with the price of new steel rail and it was increased $15 per ton by crediting the account "Cost of Steel over Iron" and debiting the cost of the new lines direct. The balance to the debit of this account "Cost of Steel over Iron" was transferred through "Cost of Road."

As above explained, the entire balance to the debit of the account "Cost of Steel over Iron" was a proper charge to the cost of the railway, and the fact that it was divided between the cost of operated line and the cost of the new lines would not affect the total.

Also as the $15 per ton increase in the price of the iron rail was charged direct to the new lines and credited to the account "Cost of Steel over Iron," it would not in any manner affect the account "Material Road Department," which had been debited and credited with the material as it had been received and disbursed at the original prices. The $500,000 referred to is evidently a portion of an average in the account "Material Road Department," representing an accumulation of several years, for material issued for both operation and construction, and was credited to a fund and was subsequently expended for additions and improvements to the property, so that instead of taking exception to this amount, it should properly have been added to the cost of the property.

The above states the method of handling this account during the fiscal year ended June 30, 1881. The account was continued for several years thereafter, and I find that the total amount

debited to that account was, at the close of the year, closed out in to "Operating Expenses."

Q. What is the next matter you have in your note, Mr. Drew?

A. Mr. Hillman's Ex. K-4 with reference to the Eastern Railway Company of Minnesota.

Q. Proceed.

A. In his testimony in connection with this table Mr. Hillman stated that $500,000 of the stock of the Park Rapids & Leech Lake Railway Company, $500,000 of the bonds of the Park Rapids & Leech Lake Railway Company, $500,000 of the bonds of the Duluth, Superior & Western Terminal Company, and $1,136,960 of the stock of the Duluth & Superior Bridge Company were charged to profit and loss on the books of the Eastern Railway Company of Minnesota, and "all of these securities show up in the statement of the assets of the Lake Superior Company, Limited, showing that these properties finally found their way into that Company." This statement is entirely erroneous. It is true that these securities were charged to profit and loss on the books of the Eastern Railway Company of Minnesota, but they were taken up at the same time on the books of the Great Northern Railway Company as a credit to profit and loss. These securities are shown among the "Stocks owned" on page 37, and "Bonds owned" on page 39 of the report of the Great Northern Railway Company to the Railroad & Warehouse Commission of Minnesota, for the fiscal year ended June 30, 1902. The Duluth & Superior Bridge Company securities, and the Park Rapids & Leech Lake bonds are now and have been in the possession and shown on the books of the Great Northern Railway Company continuously ever since they were received from the Eastern Railway Company of Minnesota.

Q. When you say the Duluth & Superior Bridge Company securities, you mean the bonds, do you?

A. Well, there is some stock and some bonds.

Q. Go ahead.

A. And the stock of the Park Rapids & Leech Lake Railway Company and the bonds of the Duluth, Superior & Western Terminal Company were continuously in the possession of and shown on the books of the Great Northern Railway Company until they were turned over to or redeemed by the issuing companies.

Mr. Hillman also stated in his testimony yesterday morning that the stock of the Park Rapids and Leech Lake Railway Company had been turned over to the Great Northern Railway Company, and that it was shown in the report of the Great Northern Railway Company to the Railroad & Warehouse Commission for the fiscal year ended June 30, 1908. This is also erroneous, as the stock was canceled as indicated by the records.

Q. Was it reported in that report?

A. No, sir.

Q. Have you examined to ascertain that fact?

A. I did.

Mr. DURMENT: Not reported in the annual report at all?

WITNESS: No, sir.

Q. On this Ex. K-4 Mr. Hillman has disallowed an item of $33,587.41, opposite the entry "Cost of Kettle River Stock" and makes the comment "No road acquired, Kettle River built by Eastern Railway and cost included in 1889 and 1890." What are the facts in reference to that construction?

A. The facts are that the stock of the Kettle River Railroad Company was acquired, according to the books of the Eastern Railway Company of Minnesota from the St. Paul & Duluth Railroad Company, and that it paid therefor in cash or its equivalent $40,000; the balance of the information is somewhat traditional. As nearly as I have been able to ascertain, a portion of this line was torn up and the value of the material, or

at least the cost of the road, was credited back with $8,914.53, leaving a debit balance of $31,085.47, which is the amount Mr. Hillman has placed in the excess column as not representing any railroad.

Q. No, he has thirty-three thousand and odd.

A. There are two credits below. I understand that a part of this railroad was taken up and then more added on to it by the Eastern.

Q. In other words, the Eastern Railroad bought an existing piece of line there from another railroad company and paid $40,000 for it; it then took up a portion of the line it had purchased, and the purchase price was credited with the salvage, leaving the item in question as the net cost of the purchase of the road?

A. Yes, sir.

Q. Then from that point on, the Eastern Railroad added new construction to the track that they had left on the ground?

A. That is as I understand it. That is traditional, that part of it.

By Mr. DURMENT:

Q. I understood you to say that the Eastern Railway of Minnesota bought the stock of this Kettle River road?

A. Yes.

Q. And paid $40,000 for it?

A. Yes, sir.

Q. And then credited back against it the cost of the material on that part they tore up?

A. That is the way they bought the road, as I understand it, by buying the stock. I think they bought the whole "shooting-match."

By Mr. HOLDEN:

Q. It was a small road in connection with a quarry up there, wasn't it?

A. It was a small branch line, as I understand it, of the

St. Paul & Duluth. After the Eastern Minnesota Railway went through there they probably cut it off and they sold it to them.

Mr. DURMENT: What I wanted to get at was, I understood from your testimony that their acquisition of that road was by purchasing the stock of the road.

WITNESS: I think I did say the stock of the road; I think that the stock carried the road with it.

Mr. DURMENT: Oh, it probably did, but then I wanted to know what the voucher showed. I understood you to say it was the stock that was bought at that price.

Mr. HOLDEN: It is a deduction from what you have said.

Q. What have you to say about the propriety of Mr. Hillman's action in disallowing that item?

A. Well, I do not think that it is a proper item to disallow, because it is very evident that it is a portion of the cost of their property.

Q. Now, I wish you would turn to Ex. K-7 for a moment, which is the seventh period into which Mr. Hillman has divided this road, and in the seventh column, headed "Additional Items of Excess Cost" he shows a figure of $12,262,400, and notes opposite that that it is on account of bonds redeemed by sale of granted lands not heretofore accounted for, taken into profit and loss at closing of books. What have you to say regarding that item?

A. Well, this amount refers to the balances on the books of the St. Paul, Minneapolis & Manitoba Railway Company at the time of the sale of the physical property to the Great Northern Railway Company, being the sum of the two accounts, Sinking Fund Consolidated Mortgage Bonds, Bonds redeemed, $6,334,000, and Sinking Fund First Mortgage Bonds, $5,928,400. These amounts—the first amount includes $73,000 and the second item includes $3,309,000, which were transferred to this account at the time that the amount was charged back to

the cost of the road, as shown in Mr. Hillman's statement Ex. K-2, which indicates that the amount $3,382,000 is clearly a repeated item.

Q. As being included in this $12,262,400, amounting to a duplication to the extent of $3,382,000?

A. Yes, sir.

Q. Because it is already in the item of excess cost from prior papers in the preceding column?

A. Yes, sir.

Mr. DURMENT: That is, Mr. Hillman has, as we say, "disallowed it twice?"

WITNESS: Yes, that is the idea. One is included in the other.

Q. In Mr. Hillman's testimony, in some form reference was made to the figure of $175, as being the price of the Manitoba stock at the time the Great Northern took a deed to the property in the year 1907. What have you to say as to the circumstances surrounding that transaction, so as to make it perfectly plain just what was involved.

A. Well, the Great Northern Railway Company purchased the property of the St. Paul, Minneapolis & Manitoba Railway Company for $35,000,000, and the assumption by it of all of the obligations of the Manitoba Company. The amount ($35,000,000) was made up by taking the book value of the Manitoba Company in excess of its obligations.

The Master: You mean stock and bonds?

WITNESS: No, sir; by taking the cost of the road; took the cost of the road, deducted from that the funded debt, and brought down the net stockholders equity, which amounted, in round figures or in actual figures, to $34,323,550.40.

The MASTER: Sometimes we speak of stock as being an obligation; you did not mean it in that sense?

WITNESS: No.

Q. And at that time what was the number of shares of the

stock of the Manitoba Company?

A. It was 200,000 shares.

Q. And the consideration of the sale was $35,000,000, you have testified?

A. Yes, sir.

Q. And the one divided into the other makes what?

A. Made $175 a share.

Mr. HOLDEN: I would like to offer in evidence a copy of the deed of the St. Paul, Minneapolis & Manitoba Railway Company to the Great Northern Railway Company, dated October 11. 1907, and ask to have it copied into the record.

Mr. DURMENT: At this point we will ask them to produce, to be offered as a part of the cross-examination with this deed from the Manitoba to the Great Northern a copy of the lease which has been made by the Manitoba to the Great Northern and was in existence at the time this deed was given, a 999-year lease, I think, and if these other deeds go in we shall want the leases or operating contracts then in force between the Great Northern and them here also, as a part of them.

The MASTER: You want them all written into the record?

Mr. DURMENT: Well, I want them in in whatever way the deeds go in. If the deeds are written in the record, I want them to follow the deed in the record. If they are printed on the side we want them printed on the side.

The MASTER: Do I understand that the lease has been abandoned and the property taken over absolutely?

Mr. DURMENT: As I understand the facts, the reason I wanted (I may not have it correct) as a matter of fact, the Great Northern Railway Company had a 999-year lease on the Manitoba Railway Company, and all they did was to pay up the Manitoba stock and cancel the lease; that is the effect of it, as I understand it.

Mr. HOLDEN: Well, we would hardly agree on the understanding of the effect of it. We will produce the lease.

(The deed is set forth at the conclusion of Mr. Drew's testimony.—Rep.)

Q. On Ex. K-7 Mr. Hillman has shown a total figure of $291,414,415.34 as the total cost of road and equipment and items which he characterizes as excess, from the time of the organization of the Manitoba Company down to, as I understand it, June 30, 1908. Am I right about that last date?

A. Yes, sir. The amount as stated by Mr. Hillman there as to the cost of road and equipment to June 30, 1908, agrees with the cost of the Great Northern Railway Company at that date, excepting the cost of the elevators.

Q. You say it agrees with the cost of the Great Northern Railway as of that date; do you mean that, or do you mean that it agrees with the figures on the books of the Great Northern of items charged to cost of road?

A. That is what I refer to,—the account.

Q. What, if any, property or properties are not included in those figures?

A. The stocks or other securities of the several proprietary companies, the Duluth Terminal Railway Company, the Minneapolis Western Railway Company, the Iowa & Great Northern Railway Company, and, I think, seven Canadian companies, in addition to other investments. For instance, the elevators owned by the Company are not included, are they?

A. In this statement; no, sir.

Q. Now, these different railroad properties that you have enumerated are all now operated as a part of the Great Northern system, are they?

A. Yes, sir. Well, they are all reported in our annual report to the stockholders.

Q. I don't mean legally operated—In fact, I think one or two of them are operated as separate corporations, but they are a part, in one form or the other, of the Great Northern system?

A. Yes, sir; they are all included in our printed report to the stockholders each year.

Q. Mr. Hillman in his exhibits has taken exceptions to certain items on account of the construction of the Pacific Extension. If you have prepared a memorandum on that subject, I wish you would give it.

A. This matter possibly would be fully and satisfactorily explained by quoting the following entry, which was made on the books of the Great Northern Railway Company under date of November 30, 1907, adjusting the accounts in connection with the construction of the Pacific Extension at the time the physical property of the St. P. M. & M. Ry. was taken over by the Great Northern Railway Company.

Q. Just a minute. I think perhaps we should indicate where the two amounts are that he takes exception to; one is on Ex. K-2, is it?

A. At pages 1934-1936, of Mr. Hillman's testimony, and at pages 1972-1977 of his testimony relating to his Exhibit K-7.

Q. The two items which you have reference to are shown on Ex. K-7, one of $210,753.68, in the column of "Additional items of Excess Cost," and the other, $246,947.76, in the same column?

A. Yes, sir.

Q. Now, proceed.

A. "In A. D. 1890, the Great Northern Railway Company began the construction of a line of railway from Pacific Junction, Montana, to Everett, Washington, known as the St. P. M. & M. Ry. Co., Pacific Extension, and the actual cash cost of the same to date, including the cost of the necessary equipment therefor, as required by the mortgage mentioned below, but not including any discount on securities, is $29,337,856.85, which has been charged to, and is now carried in account 'Construction Pacific Extension' above credited. In order to provide the funds necessary to pay the cost of this extension, the

St. P. M. & M. Railway Company issued July 1, 1890, and delivered to this Company its Pacific Extension bonds in the amount of 6,000,000 pounds.

"When issued, the par value of these bonds at the rate of exchange of $4.8484 or $29,090,909.09, was charged on the Manitoba Company's books, to 'Cost of Railway and Lands' and as by the entries under date November 1, 1907, the cost of the properties, etc., purchased from the Manitoba Company has been taken up on this Company's books as a portion of the cost of its property.

"The difference of $246,947.76 between the actual cost of the Pacific Extension and its equipment and the amount heretofore charged on account of same, becomes, therefore, a proper charge to 'Cost of Road' and is so charged in this entry.

"Of the six million pounds St. P. M. & M. Pacific Extension bonds turned over to this Company as above, two million pounds at 86 and one million pounds at 81, yielding, less commission, etc., $12,148,548.71, which was and now stands credited to the account 'Proceeds St. P. M. & M. Railway Pacific Extension Bonds' that is closed by this entry.

"On account of the unsettled financial conditions resulting from the failure of Baring Bros., London, it became impossible to dispose of all or any portion of the remaining three million pounds Pacific Extension bonds at a reasonable price.

"Therefore, to provide the necessary funds to complete and equip the Extension, the Company issued September, 1892, its collateral trust bonds in the sum of $15,000,000, secured by the deposit of the three million pounds Pacific Extension bonds, and same were subscribed for by the Company's stockholders at 72½, producing, less commissions, etc., $10,834,526.26, which was and now stands credited to the account 'Proceeds G. N. Railway Collateral Trust Bonds' that is closed out by this entry. The six million pounds St. P. M. & M. Pacific Extension bonds delivered to this Company to pay the cost of and the

equipment for the Pacific Extension, consequently yielded in cash:

£3,000,000—Pacific Extension Bonds	$12,148,548.71
$15,000,000.00 G. N. Collateral Trust Bonds...	10,834,526.26
————Á Total of	22,983,074.97
———— or	6,107,834.12
Less than the par value of the Pacific Extension Bonds.	
	$29,090,909.09
This amount	6,107,834.12

representing, as it does, the necessary discount on securities issued to provide funds to pay for construction and equipment, is, and has always been recognized as a proper charge to "Construction' and might with propriety have been charged as a portion of the cost of the Pacific Extension, or now charged as to 'Cost of Road.' To apply against this discount of $6,107,834.12, the Company appropriated from its revenue the following amounts which were and now stand credited to the account 'Fund for Construction of Cascade Tunnel,' that is closed out by this entry.

From revenue:

For year ending June 30, 1898.....	$750,000
" " 1899.....	600,000
" " 1900.....	600,000
Total	$1,950,000

"The difference between $6,107,834.12 and $1,950 000, or $4,157,834.12 is now by this entry charged to 'Suspense' and so against the difference allowed by the St. P. M. & M. Ry. Co. for the 196,660 shares of its capital stock, used in making payment for the properties, assets, etc., purchased from that Company, and the cost of said stock to the G. N. Ry. Co.

"The result of this disposition of the amount is that the amounts that now stand charged on this Company's books to

'Cost of Road,' and 'Cost of Equipment' include for the Pacific Extension and the equipment therefor, only the actual cash cost thereof, without any discount on securities issued or commissions thereon."

Mr. Hillman testifies on page 1974 (transcript) that the cost of the Pacific Extension amounted to $28,880,155.31, and by deducting this amount from the par value of the bonds, $29,090,909.09, arrives at the amount of $210,753.78, to which he takes exception. This amount plus the amount spent by the Great Northern Railway Company in the construction of this line in excess of the par value of the bonds of $246,947.76 amounts to $457,701.54. There is nothing to indicate where Mr. Hillman secured the amount given by him as the cost of this line, except from the detail construction books. This line was constructed in divisions and by adding together certain of the divisions, this amount, $28,880,155.31 is reached, but in drawing off these figures there must have been omitted from his computation the following items:

Dearborn Extension, Construction Book 1, page 2	$11,018.30
Mullen Extension, Construction Book 1, page 11	24,964.73
Explorations east of Rockies, Construction Book 1, page 14	933.10
Explorations between Rockies and Cascades, Construction Book 1, page 16	6,371.91
Cascade Pass, Construction Book 2, page 73	30,958.18

The above appear to be preliminary surveys in connection with the location of this line.

Overhead Line, page 226, Book 6	$383,555.24
or a total of	$457,801.54

That is the total of all the items you have just given as omitted from Mr. Hillman's statement of the cost of the extension?

A. There is apparently an error of $100 in Mr. Hillman's computation. In other words, the detail construction books agree with the general books as to the actual cost of this line, amounting to $29,337,856.85.

With reference to Mr. Hillman's statement on pages 1935 and 1936 (transcript) and elsewhere regarding the difference between the cost of road on the St. P. M. & M. Company's books and the cost of equipment on same and the reports made by the Company to the Railroad & Warehouse Commission of Minnesota: the St. P. M. & M. Pacific Extension mortgage above referred to provides that a certain amount of equipment should be provided for each one hundred mlies of road constructed. The terms of the mortgage were complied with and the equipment purchased and was charged on the Great Northern books to the cost of the Pacific Extension. On the St. P. M. & M. books, the cost of the Pacific Extension was represented by the par value of the Pacific Extension bonds, amounting, as above stated, to $29,090 909.09. The Railroad & Warehouse Commission of the state of Minnesota furnished a form upon which railroads are required to make reports to them. This form asks for the cost of road and the cost of equipment, and in its preparation the St. P. M. & M. Ry. Co. deducted the cost of the equipment, amounting to some $1,300,000 from the cost of road and reported it correctly as cost of equipment. When the Great Northern Railway Company, in November, 1907, purchased the physical property of the St. P. M. & M. Ry., in taking the cost of the property up on their books, properly classified it by charging to the cost of equipment the actual equipment received from the St. P. M. & M. Railway, which increased the cost of the equipment over that shown by the St. P. M. & M. Ry. Co., the above amount, which as above stated, had been carried on the books of the St. P. M. & M. Ry. in one amount.

Adjourned until Thursday morning, January 27, 1910.

Federal Building, St. Paul, Minn., Thursday, January 27, 1910, the hearing was resumed at 10 o'clock A. M.

JOHN G. DREW,

recalled on behalf of Complainants, testified:

By Mr. HOLDEN:

Q. Mr. Drew, in the testimony of January 25th, beginning on page 1992 (transcript) Mr. Hillman had some comments to make upon the subject of alleged duplications in the capitalization, or, as it was characterized, overcapitalization of the Great Northern Railway Company, in addition to the same matter or similar matter touched upon by his testimony prior to that time. I think you heard his testimony, did you not?

A. I did.

Q. If you have prepared any memorandum dealing with that subject I wish you would state it or read it into the record as most convenient.

A. I have prepared a memorandum of explanation in connection with the matters referred to by Mr. Hillman.

The excess capialization of $16,219,969.70 capitalization testified to by Mr. Hillman is made up of the following items:

Duluth, Watertown & Pacific Railway bonds....	$1,375.000
Park Rapids & Leech Lake Ry. Co. bonds.....	500,000
St. P. M. & M. Ry. Pacific Extension bonds, £2,000,000, or	9,696,969.70
Spokane Falls & Northern Ry. Co. bonds.....	2,583,000
Eastern Railway Co. of Minnesota, Northern Division bonds.....	2,065,000

Taking these items up in their order: As Mr. Hillman testified, the $1,375,000 Duluth, Watertown & Pacific Railway Co. bonds were among the securities acquired by the Great Northern Railway Company from the Manitoba Company, at a cost of $19,250,000. The stock of the Duluth, Watertown & Pacific

Railway Company was also among the securities acquired from the Manitoba Company at that cost. The bonds were secured by a mortgage, and were a lien on all the property owned by the Duluth, Watertown & Pacific Railway Company, which was a separate and distinct corporation.

When the property of that railway company was purchased by the Great Northern Railway Company, as of July 1, 1907, it was agreed that the Great Northern should pay a consideration and assume the Duluth, Watertown & Pacific Company's outstanding bonds. The consideration so paid was sufficient to enable the D. W. & P. Ry. Co. to redeem and retire its capital stock. The payment of the bonds was assumed by the Great Northern Railway Company, and as such was taken up on the Great Northern Railway Company's books and in its balance sheet as a liability. The fact that the Great Northern Railway Company also owned those bonds did not change this fact. The only way that the liability could have been canceled or written off, would have been by the surrender and cancellation of the bonds and the satisfaction of the mortgege securing them. It was considered wiser for the bonds to be kept alive in the Company's treasury. The Company's report shows this fact clearly and its balance-sheet, published in its annual report to its stockholders, divides the amount of the bonds, the payment of which had been assumed by the Great Northern Railway Company, between the amount of such bonds outstanding in the hands of the public and held in the treasury of the Company.

The Park Rapids & Leech Lake Railway Company bonds were not acquired by the Great Northern from the Manitoba Company. Those bonds were secured by a mortgage covering the property and equipment of the Park Rapids & Leech Lake Company and were an existing liability of that Company at the time its property was purchased, as of July 1, 1907, by the Great Northern Railway Company. The agreement of purchase provided that the Great Northern should pay a consideration and

assume the payment of these outstanding bonds, and such consideration was sufficient to enable the Park Rapids & Leech Lake Company to redeem and retire its outstanding capital stock. The fact that these bonds, like those of the Duluth, Watertown & Pacific Company, were owned by the Great Northern Railway Company, did not change this fact or the obligation of the Park Rapids & Leech Lake Railway Company. The only way that obligation could have been liquidated was by the surrender and cancellation of the Park Rapids & Leech Lake bonds and the satisfaction of the mortgage securing them. This would have the effect of reducing both the assets and the liabilities of the Great Northern Railway Company. It was considered wiser to keep the bonds alive in that Company's treasury, and, like those of the Duluth Watertown & Pacific Company, they are clearly shown in our annual reports on both sides of the balance-sheet.

Regarding the St. P. M. & M. Railway Co. Pacific Extension bonds: It seems that England was looked upon as the best market to obtain the necessary funds to pay for this construction. Consequently the Manitoba Company issued £6,000,000, sterling, of Pacific Extension bonds, secured by a mortgage on its line to be constructed from Pacific Junction, Montana, to Everett, Washington, which when built would come under the lease of the Manitoba lines, to Great Northern. £3,000,000 of these bonds were sold in London; £2,000,000 at one time, and £1,000,000 at another time. It seems that shortly after the last sale had been made, the failure of Baring Bros. of London, occurred, which made it impossible to negotiate a further sale of these securities abroad, and the bonds being in sterling at a specified rate of exchange, made them undesirable for American investors.

The Company had but two courses to pursue—to stop construction work until the English market recovered from the shock occasioned by the failure of Barings, or to provide funds

some other way. To have stopped construction and left the extension uncompleted, would have caused a large loss. The projected line having been covered by the Pacific Extension mortgage, the Manitoba Company was unable to issue any other security to obtain the necessary funds to complete the line, and the Great Northern Railway Company had no completed road that it could mortgage. The only recourse, therefore, was for the Great Northern Railway Company to issue its own collateral trust bonds secured by the deposit of the £3,000,000 Sterling of unsold Pacific Extension bonds. This was done, and the stockholders of the Great Northern Railway Company subscribed and paid for said collateral trust bonds. In due course these bonds were paid off from the proceeds of sale of Great Northern stock, and the £3,000,000 sterling of Pacific Extension bonds thereby came into the Great Northern's treasury. Afterwards £1,000 000 sterling, of these bonds were sold upon the market by the Great Northern Railway Company and the funds used for construction and other purposes.

At the time the property of the Manitoba Company was purchased by the Great Northern Railway Company (November 1, 1907), there was £6,000,000 sterling, of these bonds issued by the Manitoba Company and outstanding, of which £4 000,000 were in the hands of the public and £2,000,000 sterling remained in the treasury of the Great Northern Railway Company. The terms of the purchase were that the Great Northern should pay a certain consideration to the Manitoba Company and agree to assume all its outstanding obligations, which, of necessity, included the full £6,000,000, sterling, of Pacific Extension bonds; and upon the purchase being completed, these and the other Manitoba bonds were taken up upon the Great Northern books as a liability.

It would have been useless to have canceled the bonds; £4,000,000 sterling, being outstanding in the hands of the public the mortgage securing said bonds could not have been satisfied

of record. The bonds were consequently kept alive in the Company's treasury, and have since been sold. Their proceeds took the place of the bonds, in the Great Northern's holdings of property represented by its outstanding stock. These, the same as the other bonds above mentioned, have appeared in the Great Northern's report and on its balance-sheets as held in its treasury.

As testified to by Mr. Hillman, the Great Northern Railway Company purchased with the proceeds of an issue of its capital stock certain securities of what was known as the Spokane Falls & Northern Railway system, and it has acquired $2,583,000 of the Spokane Falls & Northern Railway Company's outstanding First Mortgage bonds. When the property of the Spokane Falls & Northern Railway Company was purchased by the Great Northern Railway Company as of July 1, 1907, the agreement required the Great Northern to pay a stated consideration and to assume the outstanding obligations of the Spokane Falls & Northern Railway Company, among which were First Mortgage bonds to the amount of $2,812 000. Of that amount $2,583,000 were held in the treasury of the Great Northern Railway Company, as previously stated, and, $229,000 were at that time and are now outstanding in the hands of the public.

Upon completion of the purchase, the Great Northern Railway Company set up on its books as a liability the full amount of Spokane Falls & Northern bonds, the payment of which had been assumed by it, $2,812,000. The $2,583,000 have been and are now held in the Company's treasury. There would be no object in canceling these bonds because on account of $229,000 outstanding in the hands of the public the mortgage securing the entire issue could not be canceled and satisfied of record. It was therefore better policy for the Company to continue to carry these bonds in its treasury, and they may be sold at any time.

Mr. Hillman refers in his testimony to some connection between the Spokane Falls & Northern Railway Company and the Manitoba Company. There was never any connection between those companies.

In each of the four cases I have mentioned—the Duluth, Watertown & Pacific, The Park Rapids & Leech Lake, the Pacific Extension of the Manitoba, and the Spokane Falls & Northern—the Great Northern Railway Company had acquired and owned the bonds mentioned before it purchased the property of those several railway companies, and these bonds appeared and had appeared in the accounts of the Great Northern Railway Company among its assets prior to that date. The only change that the purchase of the properties of these companies made in the accounts of the Great Northern Railway Company was to take up as a liability the payment of these bonds which was assumed as one of the conditions of the several purchases; and as soon as this came about and the bonds, the payment of which the Great Northern had assumed, included those which the Great Northern was already carrying on its books as an asset, the annual report of the Great Northern Railway Company clearly stated that fact, listed separately the bonds in the hands of the public and those in its own treasury, and made a division of the total outstanding capitalization on its balance-sheet between that held by the public and that held in its treasury.

Regarding the Eastern Minnesota bonds: Mr. Hillman's testimony is entirely in error. At the time of the purchase of the property of the Eastern Minnesota by the Great Northern Railway Company (July 1, 1907), there were $9,700,000 of Eastern Minnesota bonds outstanding and which were all held by the public. These consisted of $4,700,000 of First Division First Mortgage bonds, and $5,000,000 of Northern Division First Mortgage bonds. The First Division First Mortgage bonds matured April 1, 1908, and were presented for payment. The

terms of the Eastern Minnesota's Northern Division mortgage provide for issuance of that class of bonds in exchange for or to redeem First Division bonds. Consequently, as First Division bonds were presented Northern Division bonds were issued. Some were issued in exchange for First Division bonds; others were held in the treasury of the Great Northern Railway Company and cash paid for the First Division bonds redeemed.

The $2,065,000 of Eastern Minnesota bonds referred to by Mr. Hillman were Northern Division bonds, which were issued upon the redemption by the Great Northern Railway Company of an equal amount of First Division bonds. These bonds were redeemed by cash from the Great Northern's treasury. The Northern Division bonds have since been sold to replace that cash in the Great Northern's treasury.

Mr. Hillman in his testimony draws a distinction between the companies I have named and the Montana & Great Northern, Billings & Northern, Seattle & Montana and other roads. There was no difference between the purchases of those properties and the purchases of the properties of the Duluth, Watertown & Pacific, Park Rapids & Leech Lake, Manitoba, Spokane Falls & Northern, and Eastern Minnesota. In each case the Great Northern Railway Company agreed to pay a certain amount and to assume the liabilities of the different companies whose properties it purchased. The amounts paid as consideration in each instance were sufficient to enable those companies to redeem and retire their capital stock owned by the Great Northern Railway; but it so happened that none of those companies had issued any bonds, and consequently the Great Northern Railway Company did not have to take up on its books as a liability bonds issued by those companies. Therefore, the only difference between the Duluth, Watertown & Pacific and the Billings & Northern, for instance, is that one company had bonds outstanding, which the Great Northern had to assume as a condition of the purchase, and the other company had no bonds outstanding.

These bonds that are held in the Company's treasury of the issues above described are absolutely free assets. They may be sold or disposed of at any time the Great Northern Railway Company elects. When sold, they are an obligation of the Great Northern Railway Company, which company agreed to assume them and pay them off as a condition of purchasing the property of the companies that originally issued them. When so sold, and the cash covered into the Company's treasury, there is no duplication of capital. While these bonds are held in the Company's treasury, no interest is accrued or paid on them.

The manner in which the Company has reported these bonds in its annual balance-sheets is strictly in accordance with the rules laid down by the Interstate Commerce Commission in its "Form of General Balance-Sheet Statement," that was effective July 1, 1909. The following is quoted from pages 29 and 30 of the Commission's pamphlet, being a portion of the text of paragraph

"29, Funded Debt.

"There should be entered in this account the full amount of funded debt issued by the respondent company and outstanding, *or issued by other companies and outstanding when the payment of such securities has been assumed by the respondent company,* whether all or any portion of said funded debt is held by the public, by other railway companies, *in the company's treasury,* pledged or unpledged," etc.

The following is quoted from pages 21 and 22 of said pamphlet, being a portion of the text of account 8, "Marketable Securities":

"This account should include the cost or book value of all securities which are held in the Company's treasury unpledged and free for sale and which it is not necessary or desirable for the respondent company to hold for the purpose of maintaining the integrity of its railway system. Such securities should be subdivided to show:

(a) *Securities held in the treasury of the respondent company, whether securities of its own issue or securities the payment of which it has assumed.*

(b) Other securities," etc.

It is a matter of policy to be decided by each railway company itself whether it shall hold alive in its treasury securities which it has issued or the payment of which it has assumed, or whether it shall cancel those securities and so write down its liabilities.

CROSS EXAMINATION.

By Mr. DURMENT:

Q. There was offered in evidence yesterday by Mr. Holden a copy of the deed from the Manitoba road to the Great Northern road, conveying its railroad properties, in 1907; at that time, and for some time prior to the execution of that deed, the Great Northern road was operating the Manitoba road under a 999-year lease, was it not?

A. Yes.

Q. Have you a copy of that lease here?

A. I have.

Mr. HOLDEN: I would like to have the fact appear in the record that deeds were given from the different companies, and the considerations and obligations contained in them from different proprietary companies to the Great Northern, in the year 1907. Yesterday I put in the major deed, which was from the Manitoba Company to the Great Northern; there are a number of other deeds from companies of lesser importance, but we have agreed that we will make up a statement reciting the deeds and considerations, names of the companies grantors and also the pre-existing leases, and that will be filed after being submitted to Mr. Durment.

The MASTER: Instead of the deeds themselves?

Mr. HOLDEN: Instead of the other deeds. But Mr. Durment

says he wants to put in one lease.

The MASTER: And the deed that you offered yesterday is in evidence?

Mr. HOLDEN: That will stand, certainly.

Mr. DURMENT: I suppose if there is any difference in the conditions or terms of deeds from this sample deed or of the other leases from that, that statement will show those?

Mr. HOLDEN: Oh, yes.

Mr. DURMENT: It will be practically an abstract of the deeds and leases?

Mr. HOLDEN: Yes.

Mr. DURMENT: As a part of the cross-examination and in connection with the deed from the Manitoba Company to the Great Northern, received in evidence yesterday and entered in the record, we offer the lease referred to in my question, and ask to have that written in the record as the other was.

(Said lease is set forth in extenso immediately following the deed referred to.—Reporter.)

Q. You have stated this morning in some detail the transactions in which the Great Northern obtained the properties of the Duluth, Watertown & Pacific, and certain other lines you mentioned?

A. Yes, sir.

Q. You said that the transaction in substance was that the Great Northern paid a consideration for the road sufficient to retire the capital stock and assumed the outstanding bonds?

A. Yes, sir.

Q. It is true, is it not, that at the time of the purchase of the Duluth, Watertown & Pacific by the Great Northern, the Great Northern owned the stock of that road?

A. Yes, sir.

Q. And also owned the bonds?

A. Yes, sir.

Q. What consideration was paid, or what was the considera-

tion stated to be paid, for the Duluth, Watertown & Pacific?

The MASTER: In the contract or the deed?

Mr. DURMENT: No, what was the consideration which was agreed to be paid for the transfer of the road? I don't care where it was stated, but the actual amount that it was agreed should be paid.

A. The sum of $893,913.48, subject to mortgage of $1,375,000.

Q. What was the capital stock of the Duluth, Watertown & Pacific?

A. $730,000.

Q. Then they paid for it more than par?

A. They paid for it a sufficient sum to enable the Duluth, Watertown & Pacific to retire their stock and pay all of their outstanding liabilities excepting the First Mortgage bonds.

Q. In the case of the Duluth, Watertown & Pacific, the stock and bonds of which were then owned by the Great Northern Railway, the Great Northern road had acquired them by purchase from the Manitoba?

A. Yes, sir.

Q. And it had outstanding, either capital stock or bonds, representing the purchase price which it had paid for them, had it not?

A. Which company?

Q. The Great Northern.

A. Yes; it had originally issued capital stock to take up the securities referred to, in addition to other securities—securities from the Manitoba Company.

Q. You say as to the Park Rapids & Leech Lake road the purchase was made upon substantially the same basis as the Duluth, Watertown & Pacific?

A. Yes, sir.

Q. At the time that purchase was made by the Great Northern road, the Great Northern road owned the bonds and

also the capital stock of the Park Rapids & Leech Lake road, did it not?

A. Yes, sir.

Q. You said it had not acquired those from the Manitoba?

A. It had not.

Q. From what company or person and in what way had it acquired those?

A. The Great Northern acquired the capital stock and bonds of the Park Rapids & Leech Lake Railway from the Eastern Railway Company of Minnesota.

Q. In what way?

A. They were transferred to them in May, 1902; the entry, taking the amounts up on the books of the Great Northern Railway, reading as follows: "For the following stocks and bonds turned over to this Company by the Eastern Railway Company of Minnesota, in accordance with Article 2, Section 7, of lease of May 1, 1902, and reading as follows: 'The Eastern Company hereby sells and agrees to transfer to the Northern Company, in consideration of the obligations and payments to be assumed and made by the Northern Company, according to the provisions of this lease and the covenants and agreements in the lease provided to be kept by the Northern Company, the following stocks and bonds,'" among which were the Park Rapids & Leech Lake.

Q. Have you that lease here?

A. I have.

Q. Will you let me look at it, please?

Witness produces lease in pamphlet form.

Mr. Durment: I suppose this is one of the leases that will be included in these abstracts?

Mr. HOLDEN: Yes.

Q. Will you read into the record this Article 2, Section 7, of the lease referred to.

A. "The Eastern Company hereby sells and agrees to trans-

fer to the Northern Company, in consideration of the obligations and payments to be assumed and made by the Northern Company for the Eastern Company, according to the provisions of this lease; and of the covenants and agreements in this lease provided to be kept and performed by the Northern Company, the following mentioned stocks and bonds:

2,000 shares of $100 each in the Capital Stock of the Duluth & Superior Bridge Company;

5,000 shares of $100 each in the Capital Stock of the Park Rapids & Leech Lake Railway Company;

$650,000 in the First Mortgage Five Per Cent Bonds of the Duluth & Superior Bridge Company;

$289,000 in the Second Mortgage Five Per Cent Bonds of the Duluth & Superior Bridge Company;

$500,000 in the First Mortgage Five Per Cent Bonds of the Park Rapids & Leech Lake Railway Company; and,

$500,000 in the First Mortgage Four Per Cent Bonds of the Duluth, Superior & Western Terminal Company."

Q. The purchase by the Great Northern of the Pacific Extension of the Manitoba was substantially the same plan folfowed as these other roads you have spoken of, I understood you to say?

A. The Pacific Extension formed a part of the property of the Manitoba Company, and was purchased by the Great Northern Company with its other property.

Q. Then the Pacific Extension of the Manitoba was a part and parcel of the Manitoba purchase?

A. Yes, sir.

Q. Under the deed offered in evidence yesterday?

A. It was.

Q. Was there a separate lot of stock or bonds for that Pacific Extension?

A. There were separate bonds covering the Pacific Extension.

Q. And when were they acquired by the Great Northern Company?

A. Well, on or about the time of the construction.

Col. CLOUGH: About 1891, wasn't it?

WITNESS: I haven't the exact dates here; about the time of the construction.

Q. They were all owned by the Great Northern Company, however, at the time it purchased the Manitoba properties?

A. No, sir.

Q. Well, how much of them, or do you remember, in round numbers?

A. £2,000,000.

Q. Two million pounds of those bonds were owned by the Great Northern road?

A. On November 1, 1907, when the Great Northern purchased the Manitoba property.

Q. And how many were outstanding in the hands of the public?

A. Four million pounds.

Q. When you say outstanding in the hands of the public, do you mean people generally, or the subsidiary companies of the Great Northern Railway Company?

A. People generally.

Q. Was any considerable amount of those outstanding bonds which you say were in the hands of the public owned by any of the subsidiary organizations or corporations of the Great Northern road?

A. No, sir.

Q. Were any of them at that time owned by the Lake Superior, Limited, Company?

A. I don't know.

Q. They were not, so far as you know?

A. Not so far as I know.

Q. You haven't examined their books and don't know what

properties they had then?

A. No, sir.

Q. But they were not owned by any of the other corporations which form a part of the railway and system of the Great Northern road?

A. No, sir.

Q. Now, at the time of the Great Northern took over the Spokane Falls & Northern Company—that was in 1907, too, I think?

A. Well, it was during 1907.

Q. At that time who owned the capital stock of the Spokane Falls & Northern Company?

A. It was mostly owned by the Great Northern Railway Company. There was some outstanding stock in the hands of the public.

Q. But not in the hands of subsidiary companies of the Great Northern?

A. No, sir.

Q. Do you know how much of the stock was owned by the Great Northern and how much was outstanding in the hands of the public at that time?

A. I have not the exact figures, but the majority was owned by the Great Northern.

Q. Well, roughly? Majority might mean one share more or it might mean nine-tenths of the stock.

A. My recollection is that the outstanding shares of the Spokane Falls & Northern were very small.

Q. Well, if you can't find it easily—

A. I don't find it.

Q. Can you tell us what was the consideration, in money, agreed to be paid, in case of that road?

A. I can't state at this time.

Q. Well, the transaction was, as in the case of the Duluth, Watertown & Pacific, it was enough to pay for the stock and

the outstanding indebtedness not covered by bonds, was it?

A. Yes, sir.

Q. What I wanted to show, and perhaps that will be admitted, that substantially all of the capital stock was owned by the Great Northern road.

A. Substantially.

Q. As I understand your testimony, the acquisition by the Great Northern of the Eastern Railway of Minnesota was in 1907 also, and the same plan was followed, substantially, as in these roads we have just been speaking of.

A. In connection with the purchase of the property, yes.

Q. Who owned the stock of the Eastern Railway of Minnesota at the time the road was purchased by the Great Northern?

A. The Great Northern Railway Company.

Q. The bonds of that company, though, were not owned by them at that time, you say?

A. No, sir.

Q. Who held the bonds of the Eastern Railway of Minnesota, at the time the Great Northern acquired the property?

A. I think they were all owned by the general public.

Q. That is, they were not owned, any of them, by the subsidiary companies making up the Great Northern railway system?

A. No, sir.

Q. Do you know whether any of them were or all of them were owned or held by the Lake Superior Company, Limited?

A. I don't know who held them; they were outstanding, as far as our books were concerned, and not connected with the Lake Superior, Limited.

The MASTER: That Lake Superior, Limited, is that the ore company?

Mr. DURMENT: Yes, that is the company which holds the stock of the express company. We haven't gone into it, but I understand it that whatever property it does hold is held for

the benefit of the Great Northern. What it holds, I don't know.

The MASTER: It has been mentioned here, but its character has not been fully explained.

Mr. DURMENT: Well, that Lake Superior Limited Company has frequently been mentioned, and it is the company which Mr. Hillman's testimony tends to show the ore lands got into the possession of, and it is the company which in the stipulation as to the express company operations is referred to.

WITNESS: I would say that, as far as the records of the Great Northern or the Eastern Railway of Minnesota are concerned, the Lake Superior do not own any of the Eastern Railway of Minnesota bonds. The records seem to indicate that they were all sold to the public.

Q. Now, as to all these roads I have mentioned in my cross-examination up to the present time, is it not true that in the transfer of the road and equipment to the Great Northern, the Great Northern books carried the full amount of the book-cost of the Duluth, Watertown & Pacific and each of these other roads into the books of the Great Northern as "cost of road"?

A. The Great Northern took upon its books as the cost of the road, in cases of the roads you have mentioned, the cost of the roads at the same amount that they were shown on the balance-sheets of the individual companies.

Q. That is what I mean, but clearer than I put it. In your testimony as to the Duluth, Watertown & Pacific road, you have referred to $1,375,000 bonds of that company, which I believe you said were owned by the Great Northern Railway Company and the payment of which was assumed by the Great Northern Railway Company in its purchase of the road; is it not true that those bonds, or the full face value of them, went into the cost of road and equipment upon the books of the Duluth, Watertown & Pacific?

A. The books would so indicate.

Q. Then, when the Great Northern Railway Company carried from the books of the Duluth, Watertown & Pacific Railway Company the cost of the Duluth, Watertown & Pacific as shown upon that company's books, there was included in that, was there not, those $1,375,000 bonds?

A. Yes, sir.

Q. It is true, is it not, with regard to each of the other roads—Park Rapids & Leech Lake, the Pacific Extension of the Manitoba, and the Spokane Falls & Northern—that the bonds which you have referred to as being outstanding and practically owned by the Great Northern Railway Company and which it assumed payment of in its purchase of these roads, had been carried upon the books of those respective companies into their cost of road and equipment, and that when the Great Northern took over those roads and carried forward on to its books the cost of road and equipment shown upon the books of the separate companies purchased it carried forward these bonds as part of that?

A. That is true in case of the Eastern Railway of Minnesota and the Park Rapids & Leech Lake; it is not true of the Spokane Falls & Northern.

Q. Well, how about the Pacific Extension?

A. The Pacific Extension being a part of the Manitoba, was handled in practically the same way; that is, the entire Manitoba was handled the same. You understand, the Pacific Extension was a division covered by a mortgage, and not a railroad.

Q. Yes, but the point I want to get at is this: that in case of all these bonds that you have referred to as to these roads, they appeared upon the books of the company which had issued the bonds as part of the cost of the road and equipment; that is, the amount of them was included or the moneys derived from them had been included in the cost of the road and equipment, and that when you transferred to the Great Northern

Company's books the cost of road and equipment by transferring the amount shown upon the books of the companies purchased for road and equipment, you carried into it necessarily a purchase of those bonds or the amounts of the bonds?

A. The Great Northern Railway, in taking up on its books the purchase of these various companies, took up the actual cost of the road and equipment as shown on the books of the companies purchased, with the exception of the Spokane Falls & Northern Railway, the Columbia & Red Mountain Railway and Seattle & Montana Railroad, which were taken up at a less sum, representing, as I understand it, the cost of the securities of those companies by the Great Northern.

Q. But that cost of road, as shown upon the books of the companies purchased, was increased by the amount,—that is, of the bonds we have referred to, that is, they included the bonds?

A. Well, I assume that in all of the cases except those exceptions that are referred to, that the amount of the bonds were included in the cost of the railway as shown on the books of the different companies.

Q. That is what I had in mind. Now, referring to your testimony of yesterday and the item of $2,187,187.61, which Mr. Hillman's Ex. K-1 refers to as expenditures by George Stephen and associates, your criticism of Mr. Hillman's table on that point was that it should have gone to his second period instead of his first, in your opinion?

A. That is my opinion.

Q. Have you examined the ledger account upon the books of the Manitoba Company, with George Stephen and associates?

A. I looked it over, yes, sir.

Q. Could you say from your examination of it what items on it went to make up this $2,000,000 odd referred to?

A. No, sir.

Q. You examined it sufficiently at that time to know at the

time without being able to remember what they were, or do you?

A. Why, I merely examined it with an idea of testing Mr. Hillman's amount, and I didn't agree with him by several hundred thousand dollars, but I didn't have an opportunity or time to go back into the details to find out where the difference was.

Q. Well, now, that account on the ledger, I suppose, was an account headed George Stephen and Associates, or something similar?

A. Yes.

Q. With a debit and a credit side?

A. Yes, sir.

Q. On one side (I don't know whether you would call it debit or credit) there was made an entry which would show that the road owed Stephen so much for money advanced, or something, was there not? Would you call that the debit side or his credit side?

A. The account "George Stephen and Associate" was apparently credited with moneys received from them from time to time.

Q. Over how long a period?

A. It covered a period of four or five years.

Q. And beginning when?

A. I think it began during the fiscal year ended June 30, 1881.

Q. And those were for moneys advanced?

A. Yes, sir.

Q. So far as the books show?

A. Yes, sir.

Q. On the other side of the account I suppose that would be Stephen debited?

A. Yes, sir.

Q. And the companies credited. There were entered from

time to time various sums against that?

A. Yes.

Q. And it was from those entries—which would be Stephen's debit and the company's credit—that this item of $2,187,187.61 Mr. Hillman dug out (these two million and odd) which he has put in there as a charge against construction, was it not?

A. I assume so.

Q. So far as you could tell?

A. He had the opportunity.

Q. Well, that was the only place it could be dug out, so far as you know, from the books, wasn't it?

A. Yes, sir.

Q. Do you know of any other account in the Manitoba ledger than this one we have just referred to in which any of these entries on either side of the account were made or could be found?

A. No, I don't know as I do.

Q. You haven't seen any other?

A. No, sir.

Mr. DURMENT: At this point in the record I want to state that Mr. Hillman says that he finds it is true that of the $12,262,400 carried by him as an additional item of excess cost for bonds redeemed by a sale of the granted lands, etc., on Ex. K-7 is excessive to the amount of $3,382,000 as stated by Mr. Drew in his testimony.

The MASTER: That is, should be reduced by that amount?

Mr. DURMENT: Should be reduced by that amount. I mean that that twelve million odd includes the $3,382,000 which he had disallowed as excessive cost on Ex. K-2.

Mr. HILLMAN: I would say, if you will allow me here, that that occurred to me after I had put in my testimony, while I was away, and that I spoke to Mr. Drew on the subject to be sure that he had covered it and would cover it in his testimony.

Otherwise it was the intention of Mr. Durment and myself to mention it, and I spoke to Mr. Drew yesterday morning to see that it was there.

Q. Now, with reference to these matters of unbilled freight: in your testimony you said they were presumed to represent transportation of Company material in construction. Now, what do you mean when you say they are presumed to represent that?

A. Well, that to that extent is an inference. Vouchers from time to time infer or in fact state that it includes such expenses, and there being, as far as we have been able to find, no other charges for the transportation of Company material during the period mentioned, we felt justified in assuming that is what the account covered.

Q. Except the final voucher (a copy of one of which you produced yesterday) there is nothing on the books of the Company which says that it is to represent transportation in construction, is there?

A. Yes, sir.

Q. Now, what?

A. There appear to have been entries made on the Manitoba books, beginning with the month of July, 1883, and carried on until some time up to 1889, charging this account "Unbilled Freight" and crediting freight earnings with different sums.

Q. Well, now, perhaps you don't understand my question. You produced yesterday a copy of a voucher for one of these items of unbilled freight which had been passed to cost of road, and that was read into the record, and, as I remember it, that stated that it was, among other things, for the cost of Company transportation; now, are there any entries on the books of the Manitoba Company to which you can refer us, or any vouchers as to any of these items except the last voucher, that is, for the voucher upon which it was carried to

the cost of road, which says that it is for Company transportation?

A. When the charge is made direct or charges made to the cost of road, the voucher so states, that it covers transportation. The vouchers setting up the account to the debit of unbilled freight do not go into the detail.

Q. Well, that is getting at what I want. Let us take the first item of unbilled freight, $543,100, that was passed to cost of road and finally closed out into cost of road; have you the voucher for that?

A. I was not able to dig that particular voucher out. I have all the rest except that one.

Q. Well, take the next one. Have you here in court the voucher on which $801,000 unbilled freight for the year ending June 30, 1886, was carried on the ledger into cost of construction?

A. During the fiscal year ending June 30, 1886, I find entries made during the year debiting unbilled freight and crediting freight earnings. No detail is shown on these vouchers excepting for freight unbilled during the period. During the year these charges to the account unbilled freight aggregated $801,000; under date of June 30, 1886, the account was also debited with $62,798.47, which was credited to profit and loss, and of which the following explanation is made: "For additional amount charged on account of handling construction material used in the process of constructing the various new branches of the St. P. M. & M. Railway during the year ended June 30, 1886.' This amount, $801,000, plus $62,798.47, making a total of $863,798.47, was charged to the construction of various lines and credited to the account "Unbilled Freight." The following explanation being made: "For transportation of construction material on lines as above, also for use of engines and cars, labor picking up and sorting and loading, inspecting rails and ties, and proportionate share of legal and other general expenses applicable to these lines."

Q. That was passed to cost of road, was it?

A. It was passed to the cost of the various branch lines which were apparently under construction at that time, and ultimately to the cost of road.

Q. Isn't that the $62,000 which was passed to profit and loss?

A. Profit and loss was credited and cost of road charged with that amount.

Q. $62,000?

A. Yes.

Q. And what was credited with the other items that were charged to the cost of road?

A. Freight earnings.

Q. Now, as I gather from looking at these vouchers which you produce, we have under head of July 31, 1885, unbilled freight, $30,000 debited to freight earnings, from the voucher, the way it reads, "Unbilled freight, $30,000, Dr. to freight earnings $30,000," then under it, "For freight unbilled," during fourth week of July, 1885, and another one dated August 31, 1885, the same form, same matter stated, $65,000, but this is for the fourth week in August, 1885; September 30, 1885, same entries under the same heads, or $26,000 for fourth week in September, 1885; November 30, 1885, same thing, $25,000, for the fourth week in November, 1885. December 31, 1885, same form, $160,000 for the fourth week in December, 1885; for the 31st of January, 1886, same thing, $140,000 for the month of January, 1886; then, in parenthesis after it, (fourth week); February 28, 1886, $125,000 for the fourth week in February, 1886, the 31st of March, 1886; $100,000 for the fourth week in March, 1886; April 30, 1886, $130,000 for the fourth week of April, 1886; June 30, 1886, "Unbilled Freight," $62,798.47, Dr. to profit and loss; on the other column "$62,798.47, for additional amount charged on account of handling construction material used in the process of constructing the various new

branches of the St. P. M. & M. Railway during the year ending June 30, 1886"; on June 30, 1886, we have "St. Cloud, M. & A. Railway, $82,503.81, Dr. to Unbilled Freight, $82,503.81, for transportation of construction material, use of engines and cars, labor picking up, sorting and loading and inspecting rails and ties, and proportionate share of legal and other general expenses applicable to that line"; and also June 30, 1886, "Sundries, Dr. to Unbilled Freight, $781,294.66"; then on the preceding column "Elk River & Princeton, $70.048.03, Richmond & Willmar, $89,744.49, Tintah & Missouri River, $134,137.54; Turtle Mountain Extension, $217,116.80; Mouse River Line, $270,247.80; for transportation of construction material on lines as above, also for use of engines and cars, labor picking up, sorting and loading and inspecting rails and ties and proprotionate share of legal and other general expenses applicable to these lines." Now, these two last vouchers, June 30, 1886, are the ones on which this $801,000 was carried to the cost of road, are they not?

A. Yes, sir.

Q. What was the first entry made on your journals as to these other vouchers, that is, unbilled freight, for instance, $30,000 debtor to Freight earnings, $30,000 for freight unbilled during the fourth week of July, 1885?

A. The first charge that I have been able to find on the Manitoba books charging the account "Unbilled Freight" was July, 1883.

Q. But with reference to this particular item of unbilled freight of $30,000 for the fourth week in July, which here is debtor to freight earnings and I suppose credited to Unbilled Freight—I don't know—

A. No.

Q. —what would be the first entry of the item of $30,000 unbilled freight on your journal, and how would it appear?

A. That is a copy of it; that is a copy of the journal.

Q. Then the first entry on your books—on the books of the Manitoba Company—for unbilled freight for the fourth week in July, 1885, would be a debit to unbilled freight of $30,000, copied from this?

A. Yes, sir.

Q. That is all it would show?

A. Yes, sir.

Q. I suppose besides that, then, there would be an entry of credit to freight earnings?

A. No, sir.

Q. Of the same amount which that entry credits it to freight earnings. Well, would it appear just in that way on your books?

A. Yes.

Q. That would appear as a debit to unbilled freight and a credit to freight earnings?

A. Yes, sir.

Q. Now, was that amount carried into any other account or under any other head than a debit to unbilled freight and a credit to freight earnings before you made this final transfer of it into "Cost of Road"?

A. No, sir.

Q. What other papers or entries on your books were there than these vouchers for unbilled freight, debit and credit, to freight earnings, to show that it was Company freight?

A. Nothing.

Q. Then there is no other entry on the books and no other voucher or paper to support these vouchers for unbilled freight debited and credited to freight earnings?

A. Not that I have been able to find.

Q. And nothing to support the final vouchers on which you carried it to the cost of road except these preliminary vouchers of unbilled freight debtor and freight earnings credited?

A. No, sir.

Q. Now, I would like, if you can find your vouchers for the year before, I think it is—1884-5, $408,160. Will you produce the final vouchers on which this unbilled freight for the year ending June 30, 1885, $408,160 was carried to cost of road and the supporting vouchers.

Witness produces papers.

Q. You have produced here a voucher which I understand is the voucher on which the unbilled freight was carried into the cost of the road on the ledger and which you say covers the cost of Company freight for the year ending June 30, 1885, dated June 30, 1885, Mayville & Larimore, $408,160 in the first column; then debtor to unbilled freight, $408,160 in the second column; for transportation of construction material, use of engines and cars, labor picking up, sorting, loading and inspecting rails and ties and proportionate share of legal and other general expenses applicable to that line, order of A. H. Bode, Compt. That is the voucher, I think, that was carried to cost of road, was it not?

A. Voucher on which that amount was carried.

Q. Yes, on which that amount was carried for that year.

A. Yes, sir.

Q. That is the amount which Mr. Hillman says is excess?

A. Yes.

Q. Now, you have handed me as supporting vouchers for that—is that a proper term?

A. That is the detail.

Q. Well, as the detail of that, the following journal vouchers July 31, 1884, unbilled freight, $113,000 in first column, debtor to freight earnings, $113,000 second column for freight unbilled during the month of July, 1884; August 31, 1884, unbilled freight, $95,000 first column, debtor to freight earnings second column, $95,000 for freight unbilled during the fourth week in August, 1884; voucher, September 30, 1884, in the same form for $40,000, for the fourth week in September, 1884;

voucher January 31, 1885, same form, $8,000 for month of January, 1885, viz: first week; February 28, 1885, same form, $91,000, fourth week of February, 1885; March 31, 1885, same form, $89,000 for the fourth week of March, 1885; April 30, 1885, same form, $138,000 for the fourth week in April, 1885, May 31, 1885, $59,000 for the fourth week of May, 1885; June 30, 1885, $40,000 fourth week of June, 1885; June 30, 1885, material road department, $149 000 debtor to operating expenses; in the second column $149,000 for material charged in excess of proper amount as shown by inventory for fiscal year ending June 30, 1885, order A. H. Bode, Comptroller, June 30, 1885, operating expenses, first column, $149,000 debtor to unbilled freight; second column, $149,000, "for transportation of Company material for fiscal year ending June 30, 1885, order of A. H. Bode, Comptroller." Are there any others that go in there? These others also are called to my attention: September 30, 1884, unbilled freight $45,000 first column; debtor to freight earnings, second column, $45,000. "This entry to even up the difference between the approximate and actual earnings for the month of September, 1884, difference occurring from our taking into our September, 1884, approximates our proportion of wheat billed on to the St. Paul & Duluth Railway and they not taking it up as received until October, 1884."

January 31, 1885, freight earnings, $41,000 first column, debtor to unbilled freight, $41,000, "for reversion of above proportion of journal entry 42, folio 54, this journal, September 30, 1884; original entry was made on account of St. P. & D. Railway not having taken into account wheat billed on to them by this company, wheat having been taken into account by them. This entry is made to adjust the account, balance will be charged back in February, 1885."

February 28, 1885, freight earnings, first column, $4,000 debtor to unbilled freight; $4,000 "for reversion of above proportion of journal entry 42, folio 54, this journal, September

30, 1884. Also see entry No. 51, January 31, 1885, folio 128, this journal." Now, for this $408,160 are there any other entries on the books of the Company or any other vouchers or papers supporting it, than those I have called attention to and read?

A. No, sir, not that I have been able to locate.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Have you the voucher on which the item of $543,100, ending June 30, 1884, was carried to the cost of road and the supporting vouchers for it?

A. Yes, sir. (Producing voucher.)

Q. I find here journal voucher numbered 38, dated May 31, 1884, headed Sundries Debtor to Operating Expenses, $543,100 in the right-hand column; under that "Entered for amount properly chargeable to the following lines for hauling material, use of cars and motive power, general and legal and other operating expenses incurred during construction of said lines, viz: Grand Forks west, $266,750," in the first column, Minnesota & Dakota No. Railway, $204,500, first column, Red River & Lake of the Woods Railway, $71,850 in the first column, also notation: "See authority attached to journal voucher No. 36, folio 236. Have you that journal voucher No. 36, folio 236 referred to?

A. Not with me, no, sir.

Q. Do you remember what it was?

A. No, sir, I haven't seen it. The copy of the voucher is undoubtedly transcribed on the face of the journal; but I didn't notice the reference, didn't notice what it was.

Q. I call your attention to journal voucher No. 39, dated May 31, 1884, which is entered, Operating Expenses, and in the first column $543,100; then debtor to unbilled freight in the right-hand column, $543,100, and entered under it for

amount of unbilled freight charges from July 1, 1883 to June 30, 1884, the same being the estimated cost of operating expenses in moving Company material and other operating expenses in construction of new lines. What connection, as a matter of bookkeeping, if any, between the voucher I have just named and the one previously referred to?

A. The voucher just read charging operating expenses and crediting unbilled freight with $543,100 would in effect credit unbilled freight to which charges had been made during the year from month to month, and transferring that amount to the debit of an account called operating expenses. The same amount was subsequently transferred by the entry previously read by charging the construction of the lines mentioned and crediting the account operating expenses with the same amount, the result being the same as if the amount had been charged direct to the construction of the lines under construction and credited to unbilled freight. There is no reason shown why it was handled into and out of the account operating expenses; and, in connection with the vouchers charged from month to month; in connection with the charges to unbilled freight I notice that some of these entries state, for instance, for freight unbilled during fourth week in September. The books indicate that at that time the freight earnings were stated weekly and that "fourth week" as noted on most of these vouchers is evidently the week of the month in which the amount stated was taken into the freight earnings, and not the week in which the freight earnings were earned. It probably represented the preceding or assumed to represent the preceding month.

Q. But then, ordinarily, as I understand it, you think there would be charged against unbilled freight certain amounts and that would be then charged into freight earnings at the fourth week in the month?

A. Be credited to freight earnings in the fourth week in the month.

Q. Debited to unbilled freight?

A. To unbilled freight.

Q. And credited to freight earnings?

A. Yes, sir.

Q. Then in the case of this $543,100, was your first journal entry one debiting to unbilled freight and crediting to freight earnings?

A. Yes, sir, on July 31, 1883, there was a debit to unbilled freight of $79,000, and a credit to freight earnings of an equal amount. The entry shows that that was credited to freight earnings in the second, third and fourth weeks. Later on, in the next entry, it shows an amount credited in each one of the four weeks, and still later on it shows the total amount credited in the fourth week.

Q. Then, as I understand it, with this item of $543,100 at least, during the months in the fiscal year preceding May 31, 1884, or June 30, 1884, there were various vouchers debiting unbilled freight and crediting freight earnings; is that right?

A. Yes, sir.

Q. And at the end of the year or about the end of the year they were charged out to operating expenses?

A. To an account called operating expenses.

Q. And then charged from that account called Operating Expenses to Cost of Road and Equipment?

A. Well, charged to the individual line under construction.

Q. That is, to the cost of the road and that particular line?

A. Yes, sir.

Q. You have furnished me here vouchers as follows: May 31, 1884, unbilled freight, $243,000, the first column, debtor to freight earnings, second column, $243,000, and entered for freight unbilled during the month of May, 1884, first week, $25,000, second week $25,000, third week $25,000, fourth week, $168,000. Another voucher for April 30, 1884, unbilled freight, $215,000, debtor to freight earnings $215,000, for freight un-

billed during the month of April, 1884, fourth week, $215,000; another voucher March 31, (same form) $77,000, the explanation being "For freight unbilled during the month of March, 1884, fourth week, $73,000." Another voucher October 31, 1883, unbilled freight, $28,000, debtor to freight earnings $28,000, for freight unbilled during the month of October, 1883, second week, $24,000, third week $4,000. Another voucher, September 30, 1883, unbilled freight $107,000, debtor to freight earnings $107,000; for freight unbilled during the month of September, 1883, first week $47,000, second week $25,000, third week $10,000, fourth week $25,000. There is attached to this exhibit a paper, ink, "unbilled freight September, 1883." What does that signify?

A. Just a memorandum I guess.

Q. You don't know how that came to be made or by whose authority?

A. No, sir.

Q. I presume that was the authority that went to the bookkeeper to make the entry?

A. Possibly.

Q. August 31, 1883, unbilled freight $90,000, debtor to freight earnings $90,000 for freight unbilled during the month of August, 1883, first week $20,000, second week $25,000, third week $25,000, fourth week $20,000. July 31, 1883, unbilled freight $79,000, debtor to freight earnings, $79,000, for freight unbilled during the month of July, 1883, second week $33,000, third week $30,000, fourth week $16,000. Here is one that I have out or order, but this is dated June 30, 1884, unbilled freight $264,920, debtor to freight earnings $264,920, for freight unbilled during the month of June, 1884, first week $25,000, second week $25,000, third week $25,000, fourth week $189,920. As I understand it, these that I have read for the various months are the supporting vouchers or the authority or details for this voucher No. 39 of May 31, 1884, which I have

read which starts out Operating Expenses $543,100, debtor to unbilled freight $543,100.

A. During the fiscal year ended June 30, 1884, there had been charged to the account unbilled freight the voucher just read; $543,000 of this amount was by the voucher last mentioned credited to this account Unbilled Freight.

Q. But what I mean in this: that so far as any papers or entries in the books of account of the Great Northern are concerned there is no detail or authority for or explanation of this voucher just referred to which is not found in these vouchers I have read for each month?

A. Not that I have been able to locate.

Q. Have you examined the books of the Great Northern (or the Manitoba, as it was then), so that you are able to say whether these $543,100 operating expenses on this voucher was money actually expended in the course of the year for operation for carrying these charges, or whether it was an arbitrary amount assigned to that?

A. I have no information as to how these amounts are arrived at. I am of the opinion that they were estimates, that the trouble of keeping track and billing out all of the freight used in construction of the new lines was a bigger job than the accounting officers cared to undertake, and consequently they estimated the amount of the freight charges. The only criticism that could be made of that is that, in my opinion, they didn't get it half enough.

Q. Well, I would expect that.

A. Naturally, of course.

Q. If we had to do it over again we would make it more, of course. But the proposition is this, so far as the books are concerned, you cannot from the books of account locate what goes to make up that particular amount?

A. No, sir.

Q. Nor where it was used nor what it was?

A. Well, we know where it was used.

Q. Well, you know from these vouchers, of course?

A. Yes, sir.

Q. But outside of this voucher, so far as the books of account are concerned and so far as other papers that you have knowledge of are concerned, outside of these vouchers here which we have read this morning, I mean in connection with this one item, there is nothing upon which you can pick out the particular items going to make up the $543,100 from which you can say how much of it went to any one particular road?

A. I don't believe there is.

Q. Had not operating expenses all been accounted for and charged to the proper accounts before this voucher and entry of $543,100 was made?

A. I can't state definitely as far as that particular year is concerned. I noticed one year where there was an account opened on the books called Operating Expenses to which some of these amounts had been credited, and then, at the final closing the amount standing to the credit on that account had been transferred to a fund for additions and betterments, the amounts not having gone into detail operating expenses at all. Now, for this particular year I can't state positively whether that was ever—but it is very apparent that this amount was never reported by the Company as an operating expense, for you can plainly see by this entry that it was put into the account of operating expenses and then taken out again.

Q. It was simply run through the operating expense?

A. Yes, on the account termed operating expenses.

Q. And would ordinarily be carried on the books in that account called operating expenses?

A. At that time I didn't know of anything. If I recall correctly, the most of the detail operating expenses account were debited directly to profit and loss.

Q. Do you mean that they only kept an operating account

for the purpose of running these unbilled freight charges through them?

A. It may be possible that they opened an account operating expense at the close of the year and closed the detail accounts out through that, but the operating expense account, as I understand it, was merely a temporary account.

The MASTER: Not entered in the books at all?

WITNESS: Yes, it was on the books, but it would be opened up and cleared out at the same time or approximately the same time, closed out every year.

Q. Sort of a clearing house for general expenses.

Col. CLOUGH: You mean it was not one of the permanent accounts?

WITNESS: That was the idea.

Q. This item of $543,100 was passed through the operating expense account into the cost of road, was it not?

A. Into the cost of the individual lines shown.

Q. Into the cost of the three roads shown or named on this voucher of May 31, 1884 which I have referred to, as No. 38?

A. Yes, sir.

Q. And the only basis or support or detail (whatever you may term it) for this voucher 38, carrying it into cost of these three roads, was this voucher 39, taking into operating expense account and the details of that we have referred to?

A. Of course, I don't know what information the parties making that entry in 1884 had, but there is nothing on the books to indicate how the amount was reached.

Col. CLOUGH: Or the verbal orders from the proper officials to the accountant about the entry,—you don't know about that, of course?

WITNESS: No, I wouldn't know anything about the authorities which the accounting officers had in connection with those.

Q. Had not the operating expense account in detail been made up already before this final entry of $543,100 to the cost of these roads was made?

A. I can't state; it undoubtedly had been made for eleven months.

Q. And you would have to look at the books to find out whether they had been made for the twelfth month or not?

A. Well, I wouldn't know whether they had been completed for the twelfth month before this was made or not.

Q. But in other words, the operating expense account is made up from month to month, isn't it?

A. Yes, sir.

Q. And kept up right along each month?

A. Yes, sir.

Q. Now, Operating Expenses" ordinarily mean money paid out, don't they, for hire of men and for the various expenses of running the road? They include the wage account always, include the fuel account, don't they?

A. Generally speaking, mean the cost of the maintenance and operation of the property.

Q. Well, it would not be the cost of maintenance, would it?

A. Yes, sir.

Q. The cost of maintenance and operation of the property?

A. Yes, sir.

Q. The Manitoba, during its whole existence, kept an operating expense account, didn't it in its books?

A. Yes, sir.

Q. And into that operating expense account would be charged all the expense of operation and maintenance, wouldn't it?

A. Yes, sir.

Q. And you said that would be made up usually monthly?

A. Yes, sir.

Q. Now, is it not true that so far as wages paid were concerned, so far as fuel used was concerned in the hauling of Company materials, that would all be charged into operating expenses?

A. Naturally, over the lines under operation.

Q. Well, of course, where you could charge them, as where they were paid with reference to particular lines, they would be charged to those lines, in the operating expense account?

A. Yes, sir.

Q. In cases where the road was doing a commercial business as well as hauling Company freight, would they ordinarily keep on the operating expense account, separate each from the other, the wages paid on account of Company freight and the wages paid on account of the general business?

A. It would be utterly impossible.

Q. In other words, where the Company hauls public freight as well as its own freight, there is no way of keeping a separate track of that paid for each particular class of work?

A. No, sir.

Q. Had not the full amount of pay-rolls, pay-vouchers, materials disbursed in operation, been all charged to the operating expenses before this amount of $543,100 was taken up?

A. I can't say; it would be impossible to say. There are often items that cannot be disposed of in the current month that it is necessary to carry over.

Q. Mr. Hillman calls my attention to the item of $432,820 which was for the year ending June 30, 1884, which he says was unbilled freight, but was passed through the account for cost of equipment rather than through operating expenses. Did you examine into that?

A. Yes, sir.

Q. That appears to be a case where $543,100 of unbilled freight went through the account cost of operation into cost of road and $432,820 unbilled freight for the same period went through the account cost of equipment into cost of road. Now, can you explain why one would go through operating expenses into cost of road and the other through cost of equipment into cost of road?

A. That is the particular voucher that I stated this morn-

ing that I hadn't been able to locate. I do not have any idea of the reasons why it was handled in that way. Probably the same reason as would apply to the other items, whatever they may have been.

Q. It appears here from Mr. Hillman's Ex. K-2 that in the year ending June 30, 1885, the sum of $408,106 unbilled freight went into cost of road, but not through the operating account or the equipment account perhaps (I am not sure) and for the same period $115,840 unbilled freight went into cost of road through the equipment account, as I understand it.

A. The item of $408,160 was a direct charge to the Mayville & Larimore Northern road, and did not go through the account operating expenses.

Q. You explained that before.

A. Yes; the $115,840 did go through equipment account, the same as the other item.

Q. That is the same as the $432,820 item?

A. Yes, sir; but I do not know what the reasons were, why they put it through there.

Q. In the vouchers you have had was there anything to show?

A. I have got the voucher.

Q. May I see it?

Witness produces voucher.

Q. That voucher for the $115,840 is as follows: "June 30, 1885, equipment account $115,840, debtor to unbilled freight, $115,840, for depreciation of value, cost of repairs, use of motive power and expenses pending construction of new lines, order of A. H. Bode, Compt."

A. That is the entry.

Q. That is the entry on that voucher, is it not?

A. Yes, sir.

Q. Is that the voucher or authority under which this amount was passed to the equipment account on the ledger?

A. That is the entry.

Q. What other vouchers or papers or entries on the books of the Manitoba are there that you know of which would show the expenditure of this amount of this depreciation?

A. There does not seem to be any, as that was transferred from the equipment account to the cost of road.

Q. What is there, then, other than this voucher, to authorize or support a transfer of this amount from unbilled freight to equipment?

A. Nothing that I know of.

Q. Nothing back of this voucher that you know of?

A. No, sir.

Q. I call your attention to the item on Ex. K-2 Hillman $335,000 (that is in the year 1887-1888) unbilled freight which went into the cost of road; that was passed directly from unbilled freight to cost of road, was it not, not passed through the operating account?

A. I read that entry into the record yesterday.

Q. You needn't take any further time on that, then. It appears from Ex. K-2 and from Mr. Hillman's testimony that there was an item of $382,009.30 of unbilled freight which finally was closed out into a "Land Contract" and not into "Cost of road"; have you the vouchers for that transaction?

A. Yes, sir. (Producing papers.)

Q. As to that amount of $382,009.30, the vouchers you have furnished me appear to be as follows: September 30. 1888, unbilled freight, $70,000 first column, to freight earnings, and $70,000, second column, for freight unbilled during the month of September, 1888; and companion voucher September 30, 1888, S. P. M. & M. Ry. Land Contract ("grant" having been written first and then erased and "contract" written over it) $70,000 first column, to unbilled freight $70,000, "for transfer of account as above." The next is a voucher October 31, 1888, unbilled freight $80,000, first column, to freight earnings $80,000, second column, for unbilled freight during the month of

October, 1888, and companion voucher for that, October 31, 1888, S. P. M. & M. land contract $80,000; to unbilled freight $80,000, for transfer of account as above. Voucher dated December 31, 1888, unbilled freight, $150,000, first column, to freight earnings $150,000 second column; for unbilled freight credit to earnings during month of December; first week, $30,000, second week, $45,000, third week, $25,000, fourth week, $50,000"; the item of $45,000, credit for second week made good by mail earnings in that amount credited in November in balance-sheet but not included in estimated earnings. Companion voucher same date, S. P. M. & M. land contracts $150,000, first column, to unbilled freight, $150,000, second column, transferring as above the charge for unbilled freight for December, 1888. Voucher February 28, 1889, same form as the first one I read of these, unbilled freight, $25,000; to freight earnings, $25,000 for unbilled freight during the month of February, 1889. Companion voucher, same date, S. P. M. & M. land contracts, $25,000, to unbilled freight $25,000, transferring to S. P. M. & M. land contracts amount charged to unbilled freight for month of February, 1889. Voucher March 31, 1889, unbilled freight $57,009.30 to freight earnings, $57,009.30, for unbilled freight for the month of March, 1889. Companion voucher, same date, S. P. M. & M. Ry. land contract, $57,009.30 to unbilled freight, same amount, transferring to land contract account of unbilled freight for month of March, 1889. Are there any other vouchers or papers or entries on the books of the Manitoba road that you know of showing the reasons for or the authority of these charges in these vouchers that I have just called attention to?

A. Not that I know of, except that it seems to have been a departure from the previous plan by a new comptroller.

Q. And, so far as you know, no reason for it? at least, the books disclose no reason for it?

A. The books disclose no reason, beyond the facts. I might say, as I stated yesterday, that none of this amount was charged to cost of road.

Q. No, I understand that.

A. A part of it was transferred back to profit and loss, as stated by me yesterday.

Q. I understood that none of this item was charged to cost of road.

A. Yes.

Q. So you testified, I don't know what our showing of that is, but your testimony was that none of this went to cost of road.

A. It is a plain record on the book.

Q. But part of it stood closed out as against this land contract and the rest went into profit and loss?

A. Yes, sir.

Q. And our contention, or rather the reason Mr. Hillman gave for charging it out of the cost of road was that the lands were land-grant lands, you say they were not land-grant lands, and therefore it should not have been taken out of cost of road?

A. I didn't say that these were not land-grant lands; I don't know what lands these were. I referred to the Todd county lands that were referred to as in land-grant lands.

Q. You don't know whether these lands were land-grant lands or not?

A. No, sir.

Q. You don't know what they were?

A. No, sir.

Q. There is an item you referred to of $500,000 which you said represented the amount of property in the store account in excess of what the inventory showed, I believe—I mean of what the books showed.

A. I referred to an amount shown in the third column of Mr. Hillman's Ex. K-2, of $500,000.

Q. But as I understand it that was the $500,000 that was shown by inventory to be in the store account more than the books showed?

A. That was the explanation given for it.

Q. You said yesterday, as I understand, that it was probable that material had been billed out or sent out and charged against the store account when it wasn't all used and came back, and so that in the course of years there would be an accumulation in the store account that if you would inventory it it would show greater value than was shown on the books; did I get it right?

A. No, sir.

Q. Well, now, just explain that, will you?

A. The explanation which I was making was an attempt to show that the $15 per ton in the account Rails, Cost of Steel over Iron, had no direct connection with the inventory overage, as the material that had gone into the store account or the account Material Road Department was charged to that account when it was received, and credited to that account when it was charged out, when it was issued, and that the $500,000 which was an overage in the inventory was evidently an accumulation of several years for material which had been handled by the store department for both operation and construction and that the $500 000 eventually was credited to a fund against which additions and improvements to property were subsequently charged instead of to cost of road.

Q. Well, now, I got that and I had forgotten the connection in which you used it, but the idea I had in mind and wanted to know whether it was the correct one or not, was this: that you account for this $500,000 excess of stores on hand (that is, excess inventory value over the book value of the store account) in this way: that there has been accumulated in this store account or in the stores, or remains there, items which have already been charged out of the account on the books or have

come and not been credited to the account in the books or charged into it?

A. Represent the result of an inventory in excess of the material on hand as shown by the books, and may have resulted from all of the reasons stated by you.

Q. Then what I wanted to get at was this: suppose that if material were charged out on the books of the store account so as to show the book value of the store account depleted by that amount, if it was to go into the equipment of a new line it would be charged into cost of road, wouldn't it?

A. Yes, sir.

Q. So that the full amount charged out of that account would be charged into cost of road in that case?

A. Yes, sir.

Q. And consequently if all of that material were not used and a part of it in some way got back into the store account and was not credited to store account again or charged into it again, why, it is a mistake of some sort by which these that got back should have been charged into store account again and taken out of cost of road?

A. It would be supposed that if any material was returned to the store department that they would be charged with it when it was returned to them, and, in the event that it was not charged back to them, why, they would necessary be over that amount.

Q. That is it, and that would help to swell this excess that you speak of?

A. Yes, sir.

Q. Now, what I want to get at is this: when returned to them, ordinarily and in regular order, it ought to be charged up to them on the books?

A. Yes, sir.

Q. So that it would not go to make up an excess in the inventory?

A. Yes, sir.

Q. And if any of that were returned to them which had been charged to cost of road, it ought to be credited also, the cost of road ought to be credited to it?

A. That was returned to the store, yes, sir.

Q. So then, at least to the extent that this $500,000 excess of inventory was due to material charged out that had not been credited when it was returned, why, there was a like excess charged in cost of road in all probability?

A. In all probability. According to the present usages according to the rules of the Interstate Commerce Commission, we would now credit that up to operating expenses. In this particular case, however, operating expenses suffered to that extent, because the entire amount was subsequently spent for additions and improvements to the property and which would have been charged to the cost of the road if they had not been charged against this $500,000.

Q. Now, another thing that I wanted to ask about was when this material was billed out—I am speaking now of the practice under the Manitoba road before the Great Northern took charge, the period covered here by Ex. 2,—when this was billed out from the store department, at what prices would it be billed out?

A. Why, presumably at the prices equal to what it was charged to them, covering the cost of handling, etc.; I would say naturally that would be the ordinary method.

Q. It would be the cost of the material laid down in the store-room, ordinarily?

A. Well, in the case of rail for instance, it would mean laid down at some designated point, including the cost of the rail, inspection, insurance, freight and handling.

Q. Then it wasn't charged to this storage account or against that at the cost of the material laid down where it was to be used?

A. Well, not necessarily where it would be used; at some designated point, some central point, probably.

Q. Now, would they bill it out, that freight, covering its point of destination?

A. No, I don't think they would; they would invoice it out to the construction department at the price which would make them whole on it.

Q. That is, the cost to the construction department laid down at the point of distribution; that is the point rather where they would collect for future distribution, at the point of concentration?

A. It might be necessary to reload it and ship it to the front and again unload it.

Q. That wouldn't be included in the cost, charging it to the construction department?

A. Well, it might or might not. I should say usually not. It would be loaded and shipped to them, and after it was reloaded and started on its way, we would then bill to the construction department.

Q. And ordinarily wouldn't be charged up as a part of the store account?

A. That is, after it had been—

Q. After they had loaded it and started it on its way?

A. No, they probably would have nothing more to do with it.

Q. Now, as to that $15 a ton excess which Mr. Hillman disallowed and which you spoke of yesterday, if I followed you correctly, we don't differ on that. Let us see if I state it correctly: Steel rails were brought and put into the store department to be used some place on the System; they were charged against the store account at the cost of the steel rails laid down at the concentrating point, old material was taken up (iron rails), from some part of the System and that was turned into the store department, charged to the store de-

partment, the value of that, whatever you figure the value was; then when the steel was sent out from the store department for construction to be laid in the track, it was charged against the cost of road or construction at the figures it was charged to the store department for and the store department given credit for that amount; when the old iron which had been taken up and charged to the store department was sent out for other construction, it was charged to construction at the value it was put into the store account at, and the store account given credit for it; that after that had been done you understand that it was figured the cost of road laid with steel, or the value of the road laid with steel, I should say, was $15 a ton for the steel greater than the amount which had been charged to the store department. Did I get that right?

A. You got it all right until the last.

Q. Well, now, then?

A. It is my understanding, or it appears from the records to have been the case, that the officers in charge of the line had considered that they had probably not given the original line credit for sufficient price or large enough price for the value of the old iron, and so they raised the price of the iron arbitrarily $15 a ton and credited it to the steel. It merely took it off the one line and put it on another. The entry was made direct from the account Cost of Steel over Iron to Cost of Constructed Lines, didn't run through the "store department" or "material road department" at all; it is just an entry transferring a portion in the cost from one line to another line.

Q. Well, then, if I get you right, the only justification for that would be that the officers had concluded they had charged the old iron in at $15 too much?

A. No, at $15 too little.

Q. Well, from then you would add it to the cost of the iron, wouldn't you?

A. That is what was done.

Q. Well, from the entry here, I got the other idea, cost of steel over iron.

A. Well, I have got it in my head the other way.

Q. Which is right, now?

The MASTER: You think it should read cost of iron over steel?

WITNESS: That wouldn't hardly be right. They had overcharged or evidently thought they had overcharged them $15 a ton.

Q. Overcharged the iron? Let us get that straight.

A. They had overcharged the steel $15 a ton. That is they had charged the iron into the new branch lines at $15 a ton too little, and so they took $15 a ton out of the excess cost and put—

Q. Added it to steel?

A. No, added it to iron and credited it to steel. Let me read that.

Q. Well, Mr. Hillman tells me that this $15 went through the material account and was credited to that account.

A. The only entry that I found on the books was an entry of, I think, $382,500, which was made direct from the account Cost of Iron over Steel to the individual constructed lines.

Q. Well, I will have Mr. Hillman look up his notes and see, maybe we can refresh your mind, but I wish you would look at your notes and get that straight. I am not trying to mix you, but I thought that we had the same idea of that and I wanted to make certain. Now, I have got just around to the other way.

A. We have to a certain point there. This is what I stated yesterday: "It would appear that the price at which iron rail had been credited to the account "Cost of Steel over Iron" and subsequently debited through the account "Material Road Department to the cost of the new lines was deemed insufficient as compared with the price of new steel rail and it was increased $15 per ton by crediting the account "Cost of Steel over Iron" and debiting cost of the new lines direct."

Q. Now, what was increased, the price of steel or the price of iron?

A. The price of iron. In other words, they had not charged enough for the iron rail which was taken out of the one line and laid into the other line and they adjusted it by this entry.

Q. They adjusted it by increasing the price of steel?

A. No, they decreased the price of the steel. In other words, in that account, at the end of the fiscal year ended June 30, 1881, they had charged to the account Cost of Iron over Steel, $1,205,848.83.

Q. Cost of iron over steel?

A. Cost of steel over iron. They had credited this account with the value of iron rail removed $417,443.55. That left in the account to the debit of the Cost of Steel over Iron $788,405.28. Now instead of charging that straight to the cost of road, they took $318,520 of it and charged it to the newly constructed branch lines. That represents the increase in the cost of the iron of $15 a ton; they took the remaining balance of $469,885.28 and charged it up to the cost of road direct.

Q. Then, if I understand you, that means that they added $15 a ton to the cost of the old iron which they had taken up and relaid on the branch lines?

A. Yes, sir.

Q. That is what that means, then?

A. And deducted it.

The MASTER: It hadn't been charged enough?

WITNESS: That was the idea.

The MASTER: The construction of the branches hadn't been charged enough in comparing the two and they put in an additional charge against the iron?

WITNESS: Yes, against the iron.

The MASTER: Added to the iron?

WITNESS: Yes. sir.

Mr. HOW: Took it out of the steel,—didn't change the total?

WITNESS: It would not change the total at all.

Q. You produced yesterday a voucher and a resolution of the board with reference to $3,149,022.90, increased cost of the road. Will you let me see that again?

A. I didn't produce the voucher; I produced a copy of it. I was asked to produce the voucher, which I have done. (Producing voucher.)

Q. A copy of the voucher was put into the record yesterday?

A. Yes, sir.

Q. And the copy of the resolution went into the record yesterday?

A. Yes, sir.

Q. There was no other paper or entry on the books of the Company that you found or can refer to supporting that charge of $3,149,022.90 other than the voucher which you introduced and the resolution, was there?

A. No, sir.

Q. As I remember it, the resolution didn't make any special reference to this item of $3,149,022.90?

A. I don't recall that it specially did.

Q. So far as you know, that voucher and that resolution are all there upon the books or paper to authorize that entry?

A. So far as I have been able to locate.

Q. You said these Todd county lands referred to were not land-grant lands?

A. Yes, sir.

Q. That they were purchased by the Company from outside sources. Will you tell us whom they were purchased from and when, and what was paid for them, and tell us about the transaction.

A. This property covering some 27,500 acres was originally purchased from Henry L. Bishoffsheim and Clarisse his wife, of London, England, as per deed to J. J. Hill, dated June 13, 1882. There were two deeds at that time aggregating, one, the

consideration was $17,000, and the other $83,000, making a total of $100,000. The title to this property was transferred of the St. P. M. & M. Ry. Company by Mr. Hill and his wife, under date of April 16, 1883, consideration $100,000.

Q. In the year ending June 30, 1885, it appears from vouchers referred to here that in the cost of construction of the Mayville-Larimore line there was charged through from freight earnings, unbilled freight $408,160, and in addition to that from unbilled freight cleared into the cost of construction through the equipment account $115,840, making a total of $524,000, all charged to the cost of that road. Do you know what was the total cost charged for that year to the construction of that line?

A. No, sir.

Q. Have you any way of finding out?

A. The books would undoubtedly show it.

Q. Mr. Hillman tells me he has computed it and finds that there is $1,068,000; would a charge of $524,000 for carrying Company's freight, where the total cost of construction for that period was $1,068,000 be a reasonable and probable amount?

A. No, sir; not for the distance it would be necessary to haul that material.

Q. For the next year (that is, the year ending June 30, 1886), it appears from the vouchers we have had here today and referred you to that, on the Tintah & Missouri River line, there was charged to cost of road for unbilled freight $134,-137.54. Mr. Hillman makes the total amount charged to cost of construction that year, including the unbilled freight ($134,-137.54), $160,166.50.

A. You mean that the road was charged with $160,000 for unbilled freight and there was only $134,137.54 charged to the road?

Q. No, it was charged as $160,166.50 of which $134 137.54 was unbilled freight.

A. I don't believe you can consistently consider the charge as in any particular year. It is often necessary, in the construction of a line, to ship material out which is subsequently used, and we might, in one year, charge a credit of freight to construction of a line when in fact the material would not be charged out until the next year, it might be carried along in store account until it was applied, and the freight might be in one year and the charge for the material in the following year. I find occasions of that kind in a later date.

Q. That is, the freight would be charged against the road a year in advance of the time when the material would be, is that it?

A. It might be, and not in advance from the time the material was charged to construction.

Q. I mean charged to that line.

A. Yes.

Q. That is, in charging for the cost of the road the freight might be charged a year ahead of the charging of the material delivered?

A. It might be that long a duration.

Q. Is it usual?

A. Well, I didn't mean by that a whole year. I mean over the close of the fiscal year. The fiscal year comes in the middle of the summer. They might ship freight out in May or June and not use it until later in the summer.

Q. You referred yesterday to certain Canadian companies owned by the Great Northern, as well as other investments, which you say were excluded from the $291,000,000 of cost of road carried on their books; did I understand that right?

A. Which were not included in the $291,000,000?

Q. As I understood you, you said that the $291,000,000 of cost of road shown in your testimony or on some exhibit here excluded stock of proprietary companies and of seven Canadian companies and other investments.

A. Yes, sir.

Q. But the capital, of course, is supposed to represent these that are excluded from the $291,000,000?

A. The capital stock represents the whole investment.

Q. Referring to the issue of Great Northern collateral trust bonds based on the second issue of three million pounds of Pacific Extension bonds, what disposition was made on the books of the Company of the $454,545.42, the difference between the underlying bonds at par and the collateral issue?

A. I have not looked up that particular point, but I am under the impression it was written off with the rest of the discount on the collateral trust bonds on the Great Northern books.

Q. Then, as I understand it, your impression is it was included in that $6,107,000 discount?

A. Yes, sir.

Q. But you have not examined specifically?

A. Not specifically.

Q. With reference to the $500,000 Park Rapids & Leech Lake stock and $500,000 Park Rapids & Leech Lake bonds, can you say that they were continuously in the possession of the Great Northern Railroad from the time that they were transferred to that Company from the Eastern Railway of Minnesota through profit and loss account and from that time up to the annual report of June 30, 1908?

A. The bonds were. The stock was canceled at the time of the purchase of their property, July 1, 1907.

Q. Were they ever put up with the Eastern Minnesota as collateral?

A. By the Eastern?

Q. Were they ever put up as collateral with the Lake Superior Company, Limited?

A. They were never put up as collateral at all.

Q. They were always retained in the possession and ownership of the Company?

A. They were always in the possession either of the Eastern Railway Company of Minnesota or the Great Northern.

Q. Will you please explain how the $15,000,000 profit and loss on the Manitoba road was made up when this road was transferred to the Great Northern?

A. I thought I had the exact figures here with me, but I haven't. But, if I recall correctly, Mr. Hillman stated these figures in his direct testimony; I have not had occasion to check them, but the amount is probably correct.

Q. You are familiar with the Manitoba Company's books in a measure, are you not?

A. I can't say that I am.

Q. Well, do you know whether, after the sale of that road, the stock which was taken up was canceled and the books closed, or whether they are still open and the stock still alive?

A. I understand that the stock was all canceled except what is outstanding, and there is still at this time a small amount out in the hands of the public that they have not been able to secure.

Q. And the books are not closed yet?

A. No, not entirely so.

Q. That stock was when it was turned in for cancellation, paid for, the most of it at least, at $175 a share?

A. By whom do you mean?

Q. Well, by the Manitoba Company.

A. The Manitoba divided it out equitably between its stockholders, and that equaled $175 a share, less the amount of some $647,000 which the Great Northern I assume wrote off. Whether the Manitoba books were kept open or not, I would not be sure, but at the time it made its distribution there was enough money set aside to take up all of the outstanding stock held by the general public at the rate of $175 per share, and some of that has since come in, and some of it is still outstanding, a small portion.

CONWAY W. HILLMAN,

recalled on behalf of Defendants, testified:

By Mr. DURMENT:

Q. Mr. Hillman, it has appeared in the testimony heretofore that during the years 1885 and 1886, and perhaps in some other years certain charges to construction of road, certain amounts were passed from unbilled freight to the cost of road on the Manitoba books, and as to those years we have shown the amount so passed and the roads against which they were charged in cost of construction. I asked you to get the cost of construction done on those roads in those two years and to give us the relation between the total amount charged in those years to the cost of construction on those lines and the total amount of unbilled freight charged against that construction; have you done so as to any of the lines?

A. Yes, sir.

Q. You may tell us for what lines and for what years, and what the figures are.

A. During the year ending June 30, 1885, there was charged from unbilled freight directly to the construction account $408,160 and through the equipment account from unbilled freight $115,840, a total of $524,000, even. This was charged to the Mayville & Larimore line. The total amount of construction charged that year to this line, including the $524,000, was $1,068,134.17, or very nearly fifty per cent of the total charge was on account of this charge from unbilled freight.

In the next year the Tintah & Missouri River branch was charged with $160,166.50 of which $134,137.54 was from the unbilled freight account. The Richmond & Willmar line was charged with $213,624.66 of which $89,744.49 was from the unbilled freight. The St. Cloud & Mankato Line was charged with $295,030.97, of which $82,503.81 was unbilled freight. The Turtle Mountain Extension was charged with $421,981.26, of which $217,116.80 was from unbilled freight. The Elk River &

Princeton line was charged with $127,210.47, of which $70,048.03 was from unbilled freight. The Mouse River line was charged with $270,247.80, all of which was from unbilled freight. I have not made any further memoranda than those.

Mr. HOLDEN: We will have prepared, as I stated this morning, an abstract of the leases and deeds to the Great Northern Company and submit it to Mr. Durment, and this when satisfactory we would like to have marked, I think, as an exhibit, which will be Complainant's Ex. 58-Drew, and taken as a part of Mr. Drew's testimony. That will take a few days, but I have no doubt it will be simply a question of satisfying Mr. Durment that the abstract is sufficient for his purposes. It will be handed to Mr. Hillman, the Reporter, when completed and agreed upon.

The MASTER: You may put it right in this day's hearing.

Mr. HOLDEN: It may go in as a part of these proceedings.

The MASTER: Does this close the testimony?

Mr. DURMENT: So far as we know now.

DEED.

INDENTURE. Made this eleventh day of October, 1907, between the ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Minnesota, party of the first part, and the GREAT NORTHERN RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of said state, party of the second part, WITNESSETH:

The party of the first part is the owner, subject to the incumbrances hereinafter named, of the lines of railway described as follows, to-wit:

1. A line of railway beginning at a point in St. Paul, in the county of Ramsey and state of Minnesota, and extending thence northwesterly, by way of Anoka, St. Cloud, Barnesville and Crookston, to a point on the international boundary line between the United States and the Dominion of Canada near St. Vincent, in the county of Kittson in said state.

2. A line of railway beginning at a connection with said line last above described at Minneapolis Junction, in Minneapolis, in the county of Hennepin and state of Minnesota, and extending thence northwesterly by way of Willmar and Breckenridge, in the state of Minnesota, and Wahpeton, Casselton, Ripon, Portland and Larimore, in the state of North Dakota, to Hannah, in the county of Cavalier, in said state of North Dakota.

3. A line of railway beginning at a connection with said last above described line at Clearwater Junction, in the city of Minneapolis, in said county of Hennepin, and extending thence northwesterly to a connection with said line first above described at St. Cloud, in the county of Stearns, in the state of Minnesota.

4. A line of railway beginning at a connection with said

line of railway second above described, west of Wayzata, in said county of Hennepin, and extending thence westerly to Hutchinson, in the county of McLeod, in the state of Minnesota.

5. A line of railway beginning at a connection with said line first above described, at East St. Cloud, in the county of Benton, state of Minnesota, and extending thence northeasterly to a connection with the railway heretofore owned by the Eastern Railway Company of Minnesota, at Hinckley, in the county of Pine, in the state of Minnesota.

6. A line of railway beginning at a connection with said line of railway first above described, at Elk River, in the county of Sherburne, in the state of Minnesota, and extending thence northerly to a connection with said line last above described, at Milaca, in the county of Mille Lacs, in said state.

7. A line of railway beginning at a connection with said line of railway first above described, at St. Cloud, Minnesota, and extending thence southwesterly to a connection with said line of railway second above described, at Willmar, in the county of Kandiyohi, in the state of Minnesota.

8. A line of railway beginning at a connection with said line first above described at Sauk Center, in the county of Stearns, and extending thence northerly to Park Rapids, in the county of Hubbard, in said state of Minnesota.

9. A line of railway beginning at a connection with said line first hereinabove described, at Fergus Falls, in the county of Ottertail, in the state of Minnesota, and extending thence northerly to Pelican Rapids, in said Ottertail county, in said state of Minnesota.

10. A line of railway beginning at a connection with said line first hereinabove described, at Redland, in the county of Polk, in the state of Minnesota, and extending thence easterly

to a connection with the railway heretofore owned by the Eastern Railway Company of Minnesota, at Fosston, in said county of Polk.

11. A line of railway beginning at a connection with said line first hereinabove described near Crookston, in the county of Polk, in the state of Minnesota, and extending thence westerly and southwesterly, by way of East Grand Forks, in the state of Minnesota, Grand Forks, Devils Lake, Minot and Williston, in the state of North Dakota, and Havre, in the state of Montana, to a connection with the railway heretofore owned by the Montana Central Railway Company on the south side of the Sun River in Great Falls, in the county of Cascade, and state of Montana.

12. A line of railway beginning at a connection with said line first hereinabove described north of Barnesville, in the county of Clay, in the state of Minnesota, and extending thence northerly and westerly by way of Moorhead, in the state of Minnesota, and Fargo and Hillsboro, in the state of North Dakota, to a connection with said line last hereinabove described, at Grand Forks Junction, in the county of Grand Forks, state of North Dakota.

13. A line of railway beginning at a connection with said line second above described north of Wahpeton, in the county of Richland, in the state of North Dakota, and extending thence northerly through the states of North Dakota and Minnesota to a connection with said line last hereinabove described, at Moorhead, in the county of Clay, in the state of Minnesota.

14. A line of railway beginning at a connection with the line last hereinabove described, at said Moorhead, and extending northerly to a connection with said line first hereinabove described south of Redland, in the county of Polk, in the state of Minnesota.

15. A line of railway beginning at a connection with the railway of the Northern Pacific Railway Company near Red Lake Falls, in the county of Red Lake, state of Minnesota, and extending thence northerly to Thief River Falls, in said Red Lake county.

16. A line of railway beginning at a connection with said line last above described at St. Hilaire, in said Red Lake county, and extending thence southwesterly to Ives, in said Red Lake county.

17. A line of railway beginning at a connection with said line second above described north of Benson, in the county of Swift, in the state of Minnesota, and extending thence southwesterly through the states of Minnesota and South Dakota, to Watertown, in the county of Codington, in the state of South Dakota.

18. A line of railway beginning at a connection with said line second above described at Morris, in the county of Stevens, in the state of Minnesota, and extending thence westerly to Browns Valley, in the county of Traverse, in said state of Minnesota.

19. A line of railway beginning at a connection with said line first above described north of Evansville, in the county of Douglas, in the state of Minnesota, and extending thence westerly to a connection with said line second above described, near Tintah, in said county of Traverse, in the state of Minnesota.

20. A line of railway beginning at a connection with said line second above described, near Yarmouth, in the county of Wilkin, in the state of Minnesota, and extending thence westerly through the states of Minnesota and North Dakota to Ellendale, in the county of Dickey, in said state of North Dakota.

21. A line of railway beginning at a connection with said line last above described, at Rutland, in the county of Sargent, state of North Dakota, and extending thence southwesterly through the states of North Dakota and South Dakota, to Aberdeen, in the county of Brown, in the state of South Dakota.

22. A line of railway beginning at a connection with said line second above described, at Casselton, in the county of Cass, in the state of North Dakota, and extending thence northerly by way of Mayville, to Portland Junction, in the county of Traill, in the state of North Dakota.

23. A line of railway beginning at a connection with said line second above described, at Ripon, in said county of Cass and state of North Dakota, and extending thence northwesterly to a connection with the line of railway heretofore owned by the Dakota and Great Northern Railway Company, at Aneta, in the county of Nelson, state of North Dakota.

24. A line of railway beginning at a connection with said line second above described, at Addison, in the county of Cass, state of North Dakota, and extending thence westerly to Chaffee, in said county of Cass.

25. A line of railway beginning at a connection with said line 12th above described at Grand Forks, in the county of Grand Forks, state of North Dakota, and extending thence northerly to a point on the international boundary line between the United States and the Dominion of Canada, near Neche, in the county of Pembina, in said state of North Dakota.

26. A line of railway beginning at a connection with said line last above described at Grafton, in the county of Walsh, in the state of North Dakota, and extending thence northerly and northwesterly to Walhalla, in the county of Pembina, in the state of North Dakota.

27. A line of railway beginning at a connection with said line 12th above described, at Church's Ferry, in the county of Ramsey, in the state of North Dakota, and extending thence northwesterly to a point north of St. Johns, in the county of Rolette, in the state of North Dakota.

28. A line of railway beginning at a connection with said line 12th above described, at Rugby, in the county of Pierce, in the state of North Dakota, and extending thence northwesterly to a point north of Bottineau, in the county of Bottineau, in said state of North Dakota.

29. A line of railway beginning at a connection with said line 12th above described, west of Havre, in the county of Choteau, in the state of Montana, and extending thence westerly by way of Chester and Cut Bank, in the state of Montana, and Bonners Ferry and Sand Point, in the state of Idaho, and Spokane, Wenatchee, Wellington and Snohomish, in the state of Washington, to a connection with the railway heretofore owned by the Seattle and Montana Railroad Company at Everett, in the county of Snohomish, in the state of Washington.

30. A line of railway beginning at a connection with said line last above described, at Columbia Falls, in the county of Flathead, in the state of Montana, and extending thence southwesterly and westerly to Lakeview, in said county of Flathead.

31. Also sundry spur and branch lines of railway connecting with the railways hereinabove described and operated in connection therewith and as a part thereof.

The party of the first part is also the owner, subject to said incumbrances, of a large number of passenger cars, freight cars, express and mail cars, and other freight and passenger equipment, and of a large number of locomotives and other

rolling stock, machine shops and other shops used in connection with the railways above described, and of the tools, furnishings and appliances connected therewith, and of sundry office buildings and other buildings and structures, and the real estate upon which the same are situated.

The party of the first part is also the owner of various lands granted to it by the United States of America and by the State of Minnesota, to aid in the construction of the railroads hereinabove described; and of sundry contracts for the sale of said lands entered into with divers persons and corporations, upon which contracts sums of money are due and payable.

The party of the first part is also the owner of certain stocks and securities and other personal property, which said stocks and securities are set forth and described in a certain indenture hereinafter referred to dated February 1, 1890, executed by the party of the first part to the party of the second part.

The party of the first part is also a party to and the owner of certain rights and subject to certain obligations under divers contracts entered into with other railway companies, by which the party of the first part has granted to such other companies running rights over various parts of the railways hereinabove described; and is also a party to contracts with telegraph companies relating to telegraph service along and upon said lines of railway.

The party of the first part has heretofore executed the following mortgages:

1. A mortgage dated the first day of October, 1879, to John S. Kennedy and Samuel Thorne, of New York, as trustees, to secure an issue of bonds bearing interest at the rate of six per centum per annum, of which bonds there have been issued and are now outstanding $6,250,000, par value; which mortgage covers a part of the railways and properties hereinabove described.

2. A mortgage dated November 1, 1880, to the Central Trust Company of New York, as trustee, known as the Dakota Extension Mortgage, to secure an issue of bonds due November 1, 1910, bearing interest at the rate of six per centum per annum, of which bonds there have been issued and are now outstanding $4,822,000, par value; which said mortgage covers those parts of the lines of railway and properties hereinabove described which are situated in the state of North Dakota.

3. A mortgage dated May 1, 1883, to the Central Trust Company of New York, as trustee to secure an issue of bonds known as the Consolidated Mortgage bonds, due July 1, 1933, of which bonds there have been issued and are now outstanding $13,344,000, par value, bearing interest at the rate of six per centum per annum; and $19,250,000 par value, bearing interest at the rate of four and one-half per centum per annum which said mortgage covers parts of the railways and properties hereinabove described.

4. A mortgage dated June 1, 1887, to the Central Trust Company of New York, as trustee, known as the Montana Extension Mortgage, to secure an issue of bonds due June 1, 1937, bearing interest at the rate of four per centum per annum; of which bonds $10,185,000, par value, bearing interest at said rate of four per centum per annum have been issued and are now outstanding; which said mortgage covers parts of the railways and properties hereinabove described.

5. A mortgage dated July 1, 1890, to the Central Trust Company of New York, as trustee, known as the Pacific Extension Mortgage, to secure an issue of bonds due July 1, 1940, bearing interest at the rate of four per centum per annum, of which bonds 6,000,000 pounds sterling, have been issued and are now outstanding; which said mortgage covers parts of the railways and properties hereinabove described.

6. The party of the first part has also issued and sold improvement bonds bearing interest at the rate of four per centum per annum; of which bonds $11,910,000, par value, are now outstanding.

The party of the first part has heretofore, for a valuable consideration, guaranteed the payment of the principal and interest of bonds issued by other corporations and now outstanding, as follows:

1. $4,700 000, par value, of First Division First Mortgage five per cent gold bonds issued by the Eastern Railway Company of Minnesota, dated April 2, 1888, and payable April 1, 1908, secured by a mortgage dated January 21, 1888, executed by the Eastern Railway Company of Minnesota to the Central Trust Company of New York, as trustee.

2. $5,000,000, par value, of Northern Division First Mortgage four per cent gold bonds, issued by the said Eastern Railway Company of Minnesota dated April 1, 1898, payable April 1, 1948, secured by a mortgage dated April 1, 1898, executed by said Eastern Railway Company of Minnesota to the Mercantile Trust Company of New York, as trustee.

3. $2,150,000, par value, of First Mortgage six per cent gold bonds, and $650,000, par value, of First Mortgage five per cent gold bonds issued by the Minneapolis Union Railway Company, dated March 1, 1882, payable July 1, 1922; secured by mortgage dated March 1, 1882, executed by said Minneapolis Union Railway Company to the Central Trust Company of New York, as trustee.

4. $6,000,000 par value, of First Mortgage six per cent gold bonds, and $4,000,000, par value of First Mortgage five per cent gold bonds, issued by the Montana Central Railway Company dated July 1, 1887, payable July 1, 1937; secured by a mortgage dated July 1, 1887, executed by said Montana Central Railway

Company to the Central Trust Company of New York, as trustee.

The party of the first part heretofore, by an indenture dated February 1, 1890, leased and demised upon the terms and conditions in said indenture stated, the railways and properties hereinabove described, unto the party of the second part for a term of nine hundred and ninety-nine years from and after said first day of February, 1890, and the party of the second part has since said first day of February, 1890, been in possession and still is in possession of said railways and properties under and pursuant to said lease.

NOW THEREFORE, The party of the first part, in consideration of the sum of thirty-five million dollars ($35,000,000) to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and does hereby grant, bargain, sell and convey unto the party of the second part all and singular the said railways and lines of railway hereinabove described, together with all the rights, privileges, immunities and franchises pertaining thereto, and all branches and spur tracks connected therewith, and all right of way, yard grounds and yards, station grounds and stations, grounds acquired and held for use in connection with the said railways or any part thereof, whether acquired or held in the name of the party of the first part or in the name of some other person or corporation for its use; all sidetracks, spur tracks, machine shops and repair shows and the machinery, tools and implements therein or used in connection therewith; all roundhouses, turntables, water supply plant and equipment, warehouses, depots, and the furniture and fixtures thereof; all fuel sheds and all tools, implements and tackle designed for use in connection therewith; all stationary and portable engines, locomotive engines, passenger cars, baggage cars, mail and express cars, business cars, and all other cars of every description whatsoever designed for use

in passenger trains; all box cars, stock cars, flat cars, coal cars, and all cars of every other description whatsoever designed for use in freight traffic; all snow plows, steam shovels, wrecking cars, boarding cars, dump cars, hand cars, push cars, freight cars, and all cars of every other description; all track tools, engineering tools and instruments owned by the party of the first part; all office buildings, warehouses storage buildings, and all other buildings and structures of every name and nature now owned by the party of the first part; all stocks and securities of every name and nature owned by the party of the first part at the date hereof; all the right, title and interest of the party of the first part in and to any and all contracts with any other persons or corporations relating to running rights, telegraph service or any other matters in connection with said railways or in connection with the use and occupation of any of the property of the party of the first part; all lands granted to the party of the first part by the United States or by the State of Minnesota or by any other municipality or government to aid in the construction of the said railways hereinabove described; together with all the contracts for the sale thereof and the moneys accrued and to accrue thereunder; and all other property, tools, implements, machinery, equipment, fixtures and appurtenances owned by the party of the first part; and all property, real, personal and mixed, of every name and nature and wheresoever situated at the date hereof owned by the party of the first part, including all revenues and income accruing to the party of the first part from and after November 1, 1907.

To Have and to Hold, From and after the first day of November, 1907, all and singular the railways and properties hereby conveyed, unto the party of the second part, its successors and assigns, forever. Subject, nevertheless, to each and every of the mortgages hereinbefore recited and described. Subject, also, to all obligations imposed upon the party of the

first part under and by virtue of any contract entered into between it and any other person or corporation concerning the use, occupation or enjoyment of the said railways and properties or any part thereof, or any interest therein.

The party of the second part in consideration of the conveyance hereby made hereby assumes and agrees to pay each and every of the bonds heretofore issued by the party of the first part and now outstanding under said mortgages hereinabove referred to, and to keep and perform each and every of the covenants and conditions in and by said mortgages hereinbefore referred to, and each of them, stipulated to be kept and performed by the party of the first part; and assumes and agrees to pay any and all current indebtedness of the party of the first part existing at the date hereof; and assumes and agrees to perform all and every of the contracts heretofore entered into by the party of the first part with any persons or corporations relating to the use, occupation or enjoyment of any part of said properties or of any right therein.

The party of the second part, for the consideration above named, hereby assumes all the obligations imposed upon the party of the first part by, and all liabilities that may grow out of the several guaranties by the party of the first part of the payment of the principal and interest of said bonds heretofore issued by the Eastern Railway Company of Minnesota, the Minneapolis Union Railway Company or the Montana Central Railway Company, or by or out of the guaranty by the party of the first part of any issue of bonds now outstanding.

The party of the second part shall indemnify and save harmless the party of the first part from any and all loss, costs or expenses on account of any obligation or liability of the party of the first part herein assumed and agreed to be performed or discharged by the party of the second part.

Each of the parties hereto, in consideration of the premises, hereby releases the other, from and after November 1, 1907,

from each and every of the covenants and stipulations in and by said indenture of lease dated February 1, 1890, assumed and stipulated to be kept and performed by the parties hereto, respectively.

The party of the first part shall, from time to time and at any and all times hereafter and as often as thereto requested by the party of the second part, execute, acknowledge and deliver all such further deeds, conveyances and assurances for the better assuring and conveying unto the party of the second part of the railways and properties hereby conveyed or agreed or intended or contemplated to be hereby conveyed to the party of the second part, its successors and assigns, as the party of the second part shall deem necessary or desired.

IN WITNESS WHEREOF: The parties hereto have caused this instrument to be executed by their respective proper officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, the day and year first above written.

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,
By ROBT. I. FARRINGTON,
Second Vice President.

Attest: E. SAWYER, Secretary.
(Corporate Seal.)

GREAT NORTHERN RAILWAY COMPANY,
By LOUIS W. HILL, President.

Attest: E. SAWYER,
(Corporate Seal.) Assistant Secretary.

Executed in the presence of:
ALBAN BODINE,
EARL W. MCELROY.

STATE OF MINNESOTA, County of Ramsey. } ss.

On this 11th day of October, 1907, before me personally appeared R. I. Farrington and Edward Sawyer, to me known, who being by me first duly sworn, each for himself did depose and say: That they are the Second Vice President and Secretary, respectively, of the St. Paul, Minneapolis and Manitoba Railway Company, the corporation described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors. And said R. I. Farrington and Edward Sawyer thereupon acknowledged said instrument to be the free act and deed of said corporation.

EARL W. MCELROY,
Notary Public,
Ramsey County, Minnesota.

(Notarial Seal)

My commitsion expires April 14th, 1911.

STATE OF MINNESOTA, County of Ramsey. } ss.

On this 11th day of October, 1907, before me personally appeared Louis W. Hill and Edward Sawyer, to me known, who being by me first duly sworn each for himself did depose and say: That they are the President and Assistant Secretary, respectively, of the Great Northern Railway Company, the corporation described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors. And said Louis W. Hill and Edward Sawyer thereupon acknowledged said instrument to be the free act and deed of said corporation.

EARL W. MCELROY,
Notary Public,
Ramsey County, Minnesota.

(Notarial Seal)

My commission expires April 14th, 1911.

LEASE.

INDENTURE, Made and entered into on February 1, A. D. 1890, by and between THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, hereinafter referred to as the Manitoba Company, party of the first part, THE GREAT NORTHERN RAILWAY COMPANY, hereinafter referred to as the Northern Company, party of the second part, and the CENTRAL TRUST COMPANY OF NEW YORK, hereinafter referred to as the Trustee, party of the third part.

WHEREAS, The Manitoba Company is a railway corporation, organized and existing under that certain act of the legislature of the late Territory of Minnesota, approved May 22, A. D. 1857, entitled "An Act to execute the trust created by an act of Congress entitled, 'An Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said state,' and granting certain lands to railroad companies therein named," and under divers subsequent acts of the legislatures of said territory and of the state of Minnesota, including an act of the legislature of said state approved March 7, A. D. 1881, entitled "An Act confirming the organization and certain purchases of the St. Paul, Minneapolis and Manitoba Railway Company, and in relation to the charter, powers, franchises and property of said company"; and

WHEREAS, By construction or purchase, the Manitoba Company has acquired, and now owns and operates, within the states of Minnesota, North Dakota, South Dakota and Montana, divers lines of railroad, extending between the points, and having approximately the mileage mentioned below, to-wit:

Miles of Road Under Operation February 1, A. D. 1890, Owned by the St. P., M. & M. Ry. Co.

	Miles.
St. Paul, Minn., to Barnesville, Minn.	217.32
State Fair Grounds Spur, Minn.	0.64
Osseo Junction Minn., to St. Cloud, Minn., including north "Y"	63.07
Elk River, Minn., to Milaca, Minn.	31.80
St. Cloud, Minn., to Hinckley, Minn.	66.43
East St. Cloud, Minn., to Sauk Rapids, Minn.	2.14
St. Cloud Minn., to Willmar Junction, Minn.	55.85
Sauk Centre, Minn., to Eagle Bend, Minn.	36.44
Fergus Falls Minn., to Pelican Rapids, Minn.	21.65
Carlisle Junction, Minn., to Ellizabeth, Minn.	3.52
Minneapolis Junction, Minn., to East Minneapolis, Minn.	0.70
East Minneapolis, Minn., to Breckenridge, Minn.	204.12
Minnetonka North Shore Line, Minn.	5.93
Hutchinson Junction, Minn., to Hutchinson, Minn.	53.13
Morris, Minn. to Brown's Valley, Minn.	46.68
Tintah Junction, Minn., to Ellendale, N. Dak.	104.32
Rutland Junction, N. Dak., to Aberdeen, S. Dak.	64.00
Barnesville, Minn., to St. Vincent, Minn.	170.95
St. Vincent Junction Switch to Boundary Line.	2.62
St. Vincent Junction Switch to End of Track, via Old Depot	2.12
Shirley, Minn. to St. Hilaire, Minn.	21.55
Barnesville Junction, Minn. to Grand Forks Junction, N. Dak., via Moorhead and Fargo	98.14
Grand Forks, N. Dak., to Boundary Line	80.94
Moorhead Junction, Minn., to Halstad, Minn.	34.6[illegible]
Breckenridge, Minn., to Larimore Junction, N. Dak., via Portland	132.00

Everest, N. Dak., to Portland Junction, N. Dak., via Mayville	50.44
Ripon, N. Dak., to Hope, N. Dak	29.50
Crookston Junction, Minn., to Minot, N. Dak	230.33
Park River Junction, N. Dak., to Langdon, N. Dak	73.88
Rugby Junction, N. Dak., to Bottineau, N. Dak	38.66
Evansville, Minn., to Tintah Junction, Minn	32.03
Minot, N. Dak., to South Side Sun River, Mont	549.25
Johnstown Junction to Junction with Sand Coulee Branch, Great Falls, Mont	3.10
West Side Branch from Great Falls, Mont	0.77
Great Falls, Mont., to Smelter	5.33
Wahpeton, N. Dak., to Moorhead, Minn	42.91
Church's Ferry, N. Dak., to St. John, N. Dak	55.21
Carman, Minn., to Fosston, Minn	44.69
North St. Cloud Branch, Minn	2.53
Benson, Minn., to Watertown, S. Dak	91.62
	2,770.40

Together with depots, yards, side tracks, engine houses, machine shops, water supply plant and other appurtenances, including a general office building, with necessary furniture and fixtures, in the city of St. Paul, state of Minnesota; and

WHEREAS, The Manitoba Company has acquired, and now owns, for use in the operation of its said lines of railway, motive power and rolling stock as described below, to-wit:

Locomotive engines	259

PASSENGER EQUIPMENT.

Sleeping cars	30
Colonist Sleeping cars	8
Dining cars	6
Coaches	100

Combination passenger and baggage cars	23	
Combination baggage, mail and express cars	54	
Business and pay cars	3	
Total passenger equipment		224

FREIGHT AND WORK EQUIPMENT.

Box cars	5,839	
Flat and coal cars	1,553	
Stock cars	478	
Hay cars	6	
Furniture cars	10	
Refrigerator cars	57	
Caboose and boarding cars	171	
Derrick and tool cars	21	
Steam shovels	2	
Rotary snow plows	2	
Pile drivers	3	
Ditching cars	1	
Dump cars and Peteler cars	109	
Flangers	1	
Total freight and work equipment		8 253

Also a large quantity of machinery and shop tools, in its machine shops and round houses, and of hand cars, push cars and other implements and tools designed and kept for use in connection with the construction, maintenance and repair of its tracks and structures; and also quantities of engineering, surveying and draughting instruments and apparatus; and also quantities of materials procured and kept for use in maintaining and repairing its tracks, structures, motive power, rolling stock and other equipment and appliances; and also quantities of fuel procured and kept for use in carrying on the said company's various operations; of which machinery, shop tools and

implements, hand cars, push cars, track tools and implements, engineering and surveying instruments and apparatus, materials and fuel inventories have been made in duplicate, one copy whereof has been delivered to the Northern Company, and the other retained by the Manitoba Company; and

WHEREAS, The Manitoba Company is also owner of large quantities of lands, granted to it by the State of Minnesota, as trustee of the United States, to aid in the construction of certain of its lines of railway situated within said state, and also of a large number of contracts with divers purchasers from the said company of lands of like character, on which contracts large sums of money remain owing; which lands, and certain of which contracts, are subject to the lien of the mortgage bearing date June 21, A. D. 1879, executed by the said company to John S. Kennedy, John S. Barnes, and James A. Roosevelt as trustees, commonly known as the Manitoba Company's First Mortgage and also to the lien of that certain other mortgage bearing date May 1, A. D. 1883, executed by the Manitoba Company to the Central Trust Company of New York, as trustee, commonly known as the Manitoba Company's Consolidated Mortgage; the residue of said contracts, and the right to the moneys due and to grow due thereon, being held and owned by the Manitoba Company free and clear from liens or incumbrances; and

WHEREAS, The Eastern Railway Company of Minnesota is a railway company organized and existing under the laws of the states of Minnesota and Wisconsin, and owns and operates a line of railway extending from Hinckley, in the state of Minnesota, to West Superior, in the state of Wisconsin, a distance of about seventy (70) miles, together with grain elevators, yards, docks, warehouses, and other terminal facilities in West Superior, and sundry terminal facilities in Duluth, in the state of Minnesota, and an equipment of engines, cars and tools, for operating said road; and by a contract between itself and the

Manitoba Company, bearing date January 2, A. D. 1888, has acquired and enjoys the right, subject to the rentals, terms, conditions and limitations in said contract particularly set forth, for and during the period of ninety-nine (99) years from and after September 1, A. D. 1888, to run its engines and trains, in the transaction of its business, over the lines of railroad of the Manitoba Company between Hinckley and St. Paul and Minneapolis, so as to form a continuous railway route between St. Paul and Minneapolis and West Superior and Duluth; and has, by the same contract, conferred upon the Manitoba Company the right, subject to the rentals, terms, conditions and limitations in said contract particularly set forth, for and during the same period aforesaid, to run its engines and trains over the Eastern Railway Company's said line from Hinckley to West Superior and Duluth; and has, for the purpose of building and equipping its said railroad and terminal facilities, and of acquiring grounds therefor, issued its bonds, maturing April 1, A. D. 1908, secured by first mortgage of its said railway and terminals, and the equipment and appurtenances thereof, to the Central Trust Company of New York, as trustee, and negotiated the same, to the amount of four million two hundred and fifty thousand dollars ($4,250,000) principal, with interest at the rate of fi[illegible]) per cent per annum, payable semi-annually, payment of the principal and interest of said bonds having, for a lawful consideration, been guaranteed by the Manitoba Company, all of said bonds now being outstanding in the hands of the public; and has, for a lawful consideration, issued, sold, and delivered, to the Manitoba Company, as fully paid, fifty thousand (50,000) shares in its capital stock, of one hundred dollars ($100) each, the said bonds and shares of stock being all the bonds and stock of said company now outstanding; and

WHEREAS, The Willmar and Sioux Falls Railway Company is another railway corporation, organized and existing under the laws of the states of Minnesota and South Dakota, and has

constructed and owns a line of railway extending from Willmar, in the state of Minnesota, to Sioux Falls, in the state of South Dakota, and having an approximate length of one hundred and forty-six and ninety-one one-hundredths (146.91) miles, together with depots, yards, side tracks, water supply plant and other appurtenances; and has, for a lawful consideration, issued, sold, and delivered to the Manitoba Company its negotiable bonds, maturing June 1, A. D. 1938, and secured by a first mortgage to the Central Trust Company of New York as trustee, of all its said constructed railroad and appurtenances, to the amount of two million, six hundred and twenty-five thousand dollars ($2,625,000) principal, with interest thereon at the rate of six (6) per cent per annum, payable semi-annually; and has, also, for a lawful consideration, issued, sold, and delivered to the Manitoba Company, as fully paid, fifteen thousand (15 000) shares, of one hundred dollars ($100) each, in its capital stock; the said bonds and shares of stock being the only bonds and stock of the said company now outstanding; and

WHEREAS, The Duluth, Watertown and Pacific Railway Company is another railway corporation, organized and existing under the laws of the state of South Dakota, and has constructed and owns a line of railway, extending from Watertown to Huron, in said state, and having an approximate length of sixty-nine and eighty-four one-hundredths (69.84) miles, together with depots, yards, side tracks, water supply plant and other appurtenances; and has, for a lawful consideration, issued sold and delivered to the Manitoba Company, its negotiable bonds, maturing June 1, A. D. 1938, secured by a first mortgage to the Central Trust Company of New York, as trustee, of all its said constructed railroad and appurtenances, to the amount of one million three hundred and seventy-five thousand dollars ($1,375,000) principal, with interest thereon at the rate of six (6) per cent per annum, payable semi-annually; and has also, for a lawful consideration, issued and delivered to the Manitoba

Company, as fully paid, seven thousand three hundred (7,300) shares, of one hundred dollars ($100) each, in its capital stock; the said bonds and shares of stock being the only bonds and stock of the said company now outstanding; and

WHEREAS, The Montana Central Railway Company is a railway corporation, organized and existing under the laws of the state of Montana, and owns and operates a line of railroad extending from Great Falls to Butte, in said state, a distance of about one hundred and seventy-two (172) miles, with sundry branches having an additional approximate length of thirty-one and one-half (31½) miles of completed main track, and of forty (40) further miles of wholly or partly finished road-bed, and also with depots, stations, yards, sidetracks, water supply plant and other appurtenances; and with an equipment of engines, cars and tools for the operation thereof; and has, for the purpose of constructing and equipping its said railroad and branches, issued its negotiable bonds, maturing July 1, A. D. 1937, secured by a first mortgage to the Central Trust Company of New York, as trustee, of its said railroad and branches, and the appurtenances and equipment thereof, and has negotiated the same to the amount of six million, five hundred thousand dollars ($6,500,000) principal, with interest at the rate of six (6) per cent per annum, the payment of the principal and interest of the said bonds having, for a lawful consideration, been guaranteed by the Manitoba Company; and has, for a lawful consideration, issued, sold and delivered to the Manitoba Company, as fully paid, fifty thousand (50,000) shares of one hundred dollars ($100) each, in its capital stock; the said bonds and stock being all the bonds and stock of the said railway company now outstanding, and the said shares of stock so transferred to the Manitoba Company being subject to the lien of the Manitoba Company's Montana Extensions Mortgage hereinafter mentioned; and

WHEREAS, The Northern Steamship Company is a corporation, organized and existing under the laws of the state of Wisconsin, with power to acquire, own and navigate vessels upon the "Great Lakes," so-called, and their connecting waters, and has acquired, and now owns, six (6) steamships, with the furniture and tackle thereof; and for the purpose of raising funds to pay for the same, has issued sold and delivered to the Manitoba Company, as fully paid, fifteen thousand (15,000) shares in its capital stock, of one hundred dollars ($100) each; the said stock being all the stock of said company now outstanding; no mortgage having ever been made, nor any bonds having ever been issued by said company; and

WHEREAS, The Minneapolis Union Railway Company is a corporation, organized and existing under the laws of the state of Minnesota, having for its chief purposes the furnishing of passenger depot and other facilities in Minneapolis, Minnesota, to the several railway systems entering that place, and has constructed three (3) passenger stations within the corporate limits thereof, and about three and one-half (3½) miles of double track railway connecting said stations with the tracks of the Manitoba Company, and a stone arch viaduct across the Mississippi river, and has leased the right to the use of its plant and facilities to sundry railroad companies; and for the purpose of raising the necessary funds for acquiring right of way, and other grounds, for its said viaduct, tracks and stations, and for constructing such viaduct, tracks and stations, with their appurtenances, has issued its bonds, maturing July 1, A. D. 1922, to the aggregate amount of two million, seven hundred thousand dollars ($2,700,000), of which two million one hundred and fifty thousand dollars ($2,150,000) bear interest at the rate of six (6) per cent, and the residue at the rate of five (5) per cent per annum, payable semi-annually; all said bonds being secured by a first mortgage to the Central Trust Company of New York, as trustee, of all the property of the said Minne-

apolis Union Railway Company, and the payment of the principal and interest thereof having, for a lawful consideration, been guaranteed by the Manitoba Company; and

WHEREAS, It is provided, in substance in the said mortgage securing the said bonds, that, for like purposes, additional bonds secured thereby, to the amount of three hundred thousand dollars ($300,000) principal, with interest at a rate not exceeding six (6) per cent per annum, may be issued at the request of the board of directors of the Manitoba Company, provided a similar guaranty by the Manitoba Company of the principal and interest thereof be indorsed thereon prior to the issuance thereof; and

WHEREAS, The Manitoba Company has, for lawful considerations, acquired, and now holds and owns, the following mentioned other stocks, to-wit:

Five thousand (5,000) shares, of one hundred dollars ($100) each, in the capital stock of the Minneapolis Union Railway Company; the same comprising all the stock in said company now outstanding;

Seven hundred (700) shares, of one hundred dollars ($100) each, in the capital stock of the Saint Paul Union Depot Company;

Seventy (70) shares, of one hundred dollars ($100) each, in the capital stock of the Minnesota Transfer Railway Company;

All of which stocks of the Minneapolis Union Railway Company, of the Saint Paul Union Depot Company, and of the Minnesota Transfer Railway Company, are subject to the lien of the said mortgage bearing date on May 1, A. D. 1883, executed by the Manitoba Company to the Central Trust Company of New York, as trustee, and commonly known as the Manitoba Company's consolidated Mortgage; and

WHEREAS, The Manitoba Company has acquired, for lawful considerations, and now owns, certain other stocks and bonds, described as follows, to-wit:

Fifty-six (56) shares, of one hundred dollars ($100) each, in its own capital stock;

Fourteen hundred and ninety (1490) shares, of one hundred dollars ($100) each, in the capital stock of the Climax Coal Company;

One hundred and sixty-seven (167) shares, of one hundred dollars ($100) each in the capital stock of the Lake Superior Terminal and Transfer Railway Company;

Two thousand five hundred (2,500) shares, of one hundred dollars ($100) each, in the capital stock of the Sand Coulee Coal Company;

Fifteen hundred (1500) shares, of fifty dollars ($50) each, in the capital stock of the Saint Paul Foundry Company;

One hundred and sixteen (116) shares, of fifty dollars ($50) each, in the capital stock of the Fort Benton Bridge Company;

Six (6) bonds, for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of four (4) per cent per annum, issued by the Manitoba Company in pursuance of the provisions of the mortgage bearing date June 1, A. D. 1887, executed by said company to the Central Trust Company of New York as trustee, commonly known as the Montana Extensions Mortgage of that company, and secured by said mortgage;

Seven hundred and fifty (750) bonds for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of four and one-half (4½) per cent per annum, issued by the Manitoba Company in pursuance of the said Consolidated Mortgage, and secured thereby;

Five hundred (500) bonds, for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of six (6) per cent per annum, issued by the Montana Central Railway Company in pursuance of the mortgage dated July 1, A. D. 1887, executed by that company to the Central Trust Company of New York, as trustee, and secured by said mortgage;

One hundred and nine (109) bonds for the principal sum of one thousand dollars ($1,000) each, bearing interest at the rate of five (5) per cent per annum, issued by the Minnesota Transfer Railway Company, under and by authority of a mortgage of its plant, properties and railways, to the Saint Paul Trust Company, as trustee, bearing date August 1, A. D. 1886;

One (1) bond, for the principal sum of one hundred dollars ($100), with interest at the rate of seven (7) per cent per annum, issued by the Manitoba Company in pursuance of the mortgage dated June 21, A. D. 1879, executed by the Manitoba Company to John S. Kennedy, John S. Barnes and James A. Roosevelt, as trustees, commonly known as said company's First Mortgage, and secured by said mortgage;

Three hundred and four (304) bonds, for the principal sum of one hundred dollars ($100) each, with interest at the rate of five (5) per cent per annum, issued by the county of Todd, state of Minnesota;

Twelve (12) bonds, for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of six (6) per cent per annum, issued by the village of Hutchinson, in the county of McLeod, state of Minnesota;

Three (3) bonds, for the principal sum of one thousand dollars ($1,000) each, and one (1) bond, for the principal sum of thirteen hundred dollars ($1,300), with interest at the rate of seven (7) per cent per annum, issued by the town of Breckenridge, in the county of Wilkin, state of Minnesota;

Thirty (30) bonds, for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of six (6) per cent per annum, issued by the county of Pipestone, state of Minnesota;

Two (2) bonds for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of six (6) per cent per annum, issued by the town of Minnesota Falls, in the county of Yellow Medicine, state of Minnesota;

Two (2) bonds, for the principal sum of one thousand dollars ($1,000) each, with interest at the rate of six (6) per cent per annum, issued by the town of Sandnes, in the county of Yellow Medicine, state of Minnesota; and

WHEREAS, The Manitoba Company is the owner, free from the lien of its said First Mortgage, or of either or any of the other mortgages heretofore made by it of a large number of contracts heretofore made by it with divers persons, for the sale to them of tracts of its said granted lands, on which contracts there remain owing and unpaid, at this date, approximately the principal sum of six hundred and twenty thousand dollars ($620,000), with interest at the rate of seven (7) per cent per annum; a list of which contracts has been made in duplicate, one copy whereof has been retained by the Manitoba Company and the other delivered to the Northern Company; and

WHEREAS, The Manitoba Company is also the owner of those other items of property mentioned below, to-wit:

The brick building, situated at the corner of Fourth and Wakouta streets, in the city of St. Paul, state of Minnesota, formerly used by the Manitoba Company for its general offices, and the ground whereon said building stands;

Certain timbered lands situated in the county of Todd, state of Minnesota, acquired for a supply of wood materials for the repair and maintenance of the Manitoba Company's railways, the greater part of which lands are subject to the contracts of sale mentioned next below; the timber valuable for railway uses, having, prior to the making of such contracts, been removed therefrom; also

Certain contracts heretofore entered into with divers persons for the sale to them of certain tracts of the said timbered lands;

All which said building and ground, timbered lands, and contracts of sale, together with the moneys accrued, and to accrue,

on said contracts, are subject to the lien of the said Consolidated Mortgage; and

WHEREAS, The Manitoba Company is owner of those other items of property mentioned below, to-wit:

A certain beneficial interest in those certain parcles of land, situated in the counties of Ramsey and Hennepin, state of Minnesota, particularly described in a written agreement, bearing date April 1, A. D. 1886, between the Manitoba Company as party of the first part, the Saint Anthony Elevator Company as party of the second part, and Adolphus H. Bode, as party of the third part, the legal title to the said parcles of land now being held in the name of the Minneapolis Trust Company, as trustee; and the extent and nature of the said beneficial interest, and the obligations of the Manitoba Company in connection with said lands, and the business of the said Elevator Company prosecuted thereon, being fully set forth in the said agreement, and in another written agreement between the same parties bearing date the same day, and in another written agreement betwen the same parties bearing date July 1, A. D. 1889; also

The hotel building situated on the north shore of Lake Minnetonka, in Hennepin county, state of Minnesota, and known as "Hotel Lafayette," with the grounds appertaining thereto..

Also, the lots and lands situated near said hotel, designated in the Manitoba Company's accounts and records as its "Minnetonka Beach Lands;" also

Certain pine timbered lands, situated in the county of Mille Lacs, state of Minnesota; also

Sundry lots and unplatted lands included within sundry townsites, and not forming parts of any lands granted to said company or to its predecessors in interest, by the State of Minnesota, as hereinbefore mentioned; of which lots and unplatted lands the Manitoba Company has made a schedule, in duplicate, one copy whereof it has delivered to the Northern Company, and the other whereof it has retained; and

WHEREAS, The Manitoba Company has also acquired and now owns the beneficial right and title to certain lands, heretofore granted by the State of Minnesota to the Minneapolis and Saint Cloud Railroad Company, to aid in the construction of that part of the railway lines which the last named company was authorized to build, extending from Saint Cloud to Hinckley, in the state of Minnesota; and

WHEREAS, By a written contract, bearing date October 1, A. D. 1882, between the Manitoba Company and the Northern Pacific, Fergus and Black Hills Railroad Company, a corporation organized and existing under the laws of the State of Minnesota, the Manitoba Company acquired, subject to the rentals, terms and conditions in the said contract set forth, the perpetual right to the use of all that part of the railroad of the said Northern Pacific, Fergus and Black Hills Railroad Company, extending from Fergus Falls to Breckenridge; and

WHEREAS, By another written contract, bearing date October 1, A. D. 1882, between the Manitoba Company and the Little Falls and Dakota Railroad Company, another corporation organized and existing under the laws of the State of Minnesota, it was, in substance, provided that, upon the terms and conditions therein set forth, the line of railroad of the Little Falls and Dakota Railroad Company, extending from Sauk Centre to Morris, and the line of railroad of the Manitoba Company extending from Morris to Brown's Valley should, at the pleasure of either of the said parties, be deemed united, so as to form a continuous line of railroad extending from Sauk Centre to Brown's Valley, subject to use by both said parties in common; and

WHEREAS, By a contract, bearing date August 27, A. D. 1874, between the First Division of the St. Paul and Pacific Railroad Company, the predecessor in interest of the Manitoba Company, and the trustees under certain mortgages theretofore made by

the said First Division Company, as parties of the first part, and the Minneapolis and Saint Louis Railway Company, another railway corporation, as party of the second part, the said Minneapolis and Saint Louis Railway Company was leased the right to construct certain railroad tracks upon and over the right of way and station grounds of the said First Division Company, in the city of Minneapolis, state of Minnesota, and also the right to a joint use of a certain portion of another track running over said grounds and belonging to the said First Division Company; the last named company reserving to itself the right to a joint use of one of the said tracks so to be built by the said Minneapolis and Saint Louis Railway Company; all upon certain considerations, terms and conditions in said contract set forth; and the Manitoba Company having succeeded to all the rights and obligations originally accruing to and against the said First Division Company under said contract; and

WHEREAS, By a written contract, bearing date September 25, A. D. 1879, between the Manitoba Company and the Saint Paul, Stillwater and Taylor's Falls Railway Company, another railway corporation, certain trackage rights in and to certain tracks of the Manitoba Company in the said city of Saint Paul, were leased to the said Saint Paul, Stillwater and Taylor's Falls Railway Company, upon terms and conditions and for rentals in the said contract set forth; the Chicago, Saint Paul, Minneapolis and Omaha Railway Company having succeeded to the rights and obligations of the said Saint Paul, Stillwater and Taylor's Falls Railway Company under such contract; and

WHEREAS, By certain written contracts, one bearing date August 7, A. D. 1880, and another bearing date March 31, A. D. 1883, between the Manitoba Company and the said Chicago, Saint Paul Minneapolis and Omaha Railway Company, certain other trackage rights in and to certain tracks of the Manitoba Company, extending from Saint Paul to Minneapolis, were leas-

ed to the said Chicago, Saint Paul, Minneapolis and Omaha Railway Company, for certain periods, and upon terms and conditions, and for rentals, in said contracts set forth; and

WHEREAS, By a certain other contract, bearing date October 1, A. D. 1882, between the Manitoba Company and the Northern Pacific Railroad Company, another railroad corporation, certain trackage rights in and to certain tracks also extending from Saint Paul to Minneapolis, were leased to the said Northern Pacific Railroad Company, for a period, and upon terms and conditions, and for rentals, in said contract set forth; and

WHEREAS, By certain other contracts, one bearing date October 1, A. D. 1884, and another bearing date July 17, A. D. 1886, between the Manitoba Company and the Minnesota, Saint Croix and Wisconsin Railroad Company, another railroad corporation, certain trackage rights on certain tracks of the Manitoba Company, extending from Saint Paul to Minneapolis, and certain privileges in the passenger station of the Saint Paul Union Depot Company, in Saint Paul, and certain privileges in the passenger station of the Minneapolis Union Railway Company, in Minneapolis, and certain yard, switching, round house, and freight house services, in the yards and freight houses of the Manitoba Company, in Minneapolis, and certain locomotive service between Saint Paul and Minneapolis for certain passenger trains of the said Minnesota, Saint Croix and Wisconsin Railroad Company, were granted to the last named company, for certain periods, and upon terms and conditions, and for rentals and other payments, in said contracts set forth; and

WHEREAS, By another written contract, bearing date July 2, A. D. 1888, between the Manitoba Company and the Wisconsin Central Company, another railway corporation, as the successor in interest of the said Minnesota, Saint Croix and Wisconsin Railroad Company, the said two contracts between the Manitoba Company and the said Minnesota, Saint Croix and

Wisconsin Railroad Company were modified in certain minor particulars, and all the obligations of the same as so modified, were assumed by the said Wisconsin Central Company; and

WHEREAS, By three other written contracts, bearing date, respectively, May 11, A. D. 1886, between the Manitoba Company and the Chicago, Burlington and Northern Railroad Company, another railroad corporation, certain trackage rights on certain tracks of the Manitoba Company extending from Saint Paul to Minneapolis, and a certain freight house of the Manitoba Company in Saint Paul, and certain yard privileges and switching services in St. Paul, and certain yard, switching, round house and freight house services in the round house, yards, and freight houses of the Manitoba Company, in Minneapolis, were granted to the said Chicago, Burlington and Northern Railroad Company, for certain periods, and upon terms and conditions, and for rentals and other payments, in said contracts set forth; and

WHEREAS, By another written contract, bearing date August 1, A. D. 1887, between the Manitoba Company and the Minnesota and Northwestern Railroad Company, another railway corporation, certain trackage rights in certain tracks of the Manitoba Company extending from Saint Paul to Minneapolis, were leased to the said Minnesota and Northwestern Railroad Company, for a period, and upon terms and conditions, and for rentals and other payments, in said contract set forth; and

WHEREAS, By another contract, bearing date June 1, A. D. 1889, between the Manitoba Company and the Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, another railway corporation certain trackage rights in certain tracks of the Manitoba Company, extending from Saint Paul to Minneapolis, and also certain rights in the passenger station of the Saint Paul Union Depot Company, in Saint Paul, were leased to the said Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, for a period, and upon terms and conditions,

and for rentals and other payments, in said contract set forth; and

WHEREAS, By a deed, bearing date January 13, A. D. 1880, made by the Manitoba Company to the Saint Paul Union Depot Company, and also by a written contract, bearing date February 10, A. D. 1880, between the same parties, the Manitoba Company has reseved, and has been assured, certain rights for the use of its own traffic and for the use of the traffic of such other companies as it has admitted, or shall admit, to participate in the enjoyment of such rights, in the tracks, platforms, passenger depot, and other facilities and plant of the said Saint Paul Union Depot Company, in Saint Paul, upon terms and conditions, and for payments, in said contract set forth; and

WHEREAS, By a written contract between the Manitoba Company and the Minneapolis Union Railway Company, bearing date July 1, A. D. 1886, the Manitoba Company has secured for the use of its passenger trains and business, certain rights and privileges in the tracks, platforms, passenger depots and other facilities and plant of the said Minneapolis Union Railway Company, for a period, and upon the terms and conditions, and for rental and other payments in said contract set forth; and

WHEREAS, The Manitoba Company has granted to sundry persons and corporations, licenses and permits, for limited periods, to place and maintain upon its right of way, and other grounds, grain elevators and warehouses, lumber yards, fuel yards, oil sheds, and other industries, and has likewise made contracts with divers persons and corporations relating to the performance of switching and other traffic and operating services for such persons and corporations, including a contract with the American Express Company, for the handling of express traffic upon its railway system, and has made contracts with divers other carriers for the exchange of traffic; of which licenses, permits, and contracts, a duplicate list has been pre-

pared, one copy whereof has been delivered to the Northern Company, and the other retained by the Manitoba Company; and

WHEREAS, By a written contract, bearing date July 1, A. D. 1882, between the Manitoba Company, and the Western Union Telegraph Company, telegraph lines have been constructed, and are being maintained and operated along said railways, upon terms and conditions in said contract set forth; and

WHEREAS, The Saint Paul and Pacific Railroad Company, being then the owner of the railroad extending from Saint Paul via Saint Anthony (now Eastern Division of the city of Minneapolis) to Watab, now owned by the Manitoba Company, by trust deed, bearing date June 2, A. D. 1862, executed to Russell Sage and Samuel J. Tilden, as trustees, mortgaged the said railroad and its appurtenances, to secure the payment of certain bonds maturing July 1, A. D. 1892; of which bonds there now remain outstanding and unpaid, bonds to the amount of three hundred and sixty-six thousand dollars ($366,000) principal, bearing interest at the rate of seven (7) per cent per annum, payable semi-annually on the first days of January and July of each year; and

WHEREAS, The Manitoba Company has, since its organization, issued and negotiated bonds secured by trust deeds of its railways and other property, as follows, to-wit:

Bonds amounting to eight millions of dollars ($8,000 000) principal, bearing interest at the rate of seven (7) per cent per annum, payable semi-annually on the first days of January and July of each year, bearing date June 21, A. D. 1879, maturing July 1, A. D. 1909, and secured by deed of trust upon certain railways forming portions of the railways leased by this instrument, and granted lands therein described, bearing even date with said bonds, and executed to John S. Kennedy, John S. Barnes and James A. Roosevelt, as trustees, commonly known as the Manitoba Company's First Mortgage; of which bonds there

remain outstanding at the date hereof bonds whose principal sums amount in the aggregate to the sum of four million four hundred and eighty thousand dollars ($4,480,000); all said bonds being subject to redemption, with the net proceeds of the sales of said granted lands, as in said bonds and in the said mortgage particularly set forth;

Bonds amounting to eight millions of dollars ($8,000,000) principal, bearing interest at the rate of six (6) per cent per annum, payable semi-annually on the first days of April and October of each year, bearing date October 1, A. D. 1879, maturing October 1, A. D. 1909 and secured by deed of trust upon certain railways therein described, forming portions of the railways leased by this instrument, bearing even date with said bonds and executed to John S. Kennedy and Samuel Thorne, as trustees, commonly known as the Manitoba Company's Second Mortgage; all of which bonds remain outstanding;

Bonds amounting to five million six hundred and seventy-six thousand dollars ($5,676,000) principal, bearing interest at the rate of six (6) per cent per annum, payable semi-annually on the first days of May and November of each year, bearing date November 1, A. D. 1880 maturing November 1, A. D. 1910, and secured by deed of trust upon certain railways therein described, forming portions of the railways leased by this instrument, bearing even date with said bonds, and executed to the Central Trust Company of New York, as trustee, commonly known as the Manitoba Company's Dakota Extensions Mortgage; all of which bonds remain outstanding;

Bonds to the amount of thirteen million three hundred and forty-four thousand dollars ($13,344,000) principal, bearing interest at the rate of six (6) per cent per annum, payable semi-annually on the first days of January and July of each year; also, bonds to the further amount of thirteen million six hundred and fifty-one thousand dollars ($13,651,000) principal, bearing interest at the rate of four and one-half (4½) per cent

per annum, payable semi-annually on the days last above stated; all said bonds bearing date May 1, A. D. 1883, maturing July 1, A. D. 1933, and secured by deed of trust upon certain railways forming portions of the railways leased by this instrument, and granted lands therein described, and also upon the said shares of stock of the Minneapolis Union Railway Company, the Minnesota Transfer Railway Company, and the Saint Paul Union Depot Company, owned by the Manitoba Company, bearing even date with said bonds, and executed to the Central Trust Company of New York, as trustee, commonly known as the Manitoba Company's Consolidated Mortgage; all of which bonds of both classes remain outstanding;

Bonds amounting to seven million four hundred and sixty-eight thousand dollars ($7,468,000) principal, bearing interest at the rate of four (4) per cent per annum, payable semi-annually on the first days of June and December of each year, bearing date June 1, A. D. 1887, maturing June 1, A. D. 1937, and secured by deed of trust upon certain railways therein described, forming portions of the railways leased by this instrument, and also upon the said shares in the Montana Central Railway Company's stock owned by the Manitoba Company, bearing even date with said bonds, and executed to the Central Trust Company of New York, as trustee, commonly known as the Manitoba Company's Montana Extensions Mortgage; all of which bonds remain outstanding; and

WHEREAS, It is provided, in substance, in and by the said Consolidated Mortgage that, of the bonds thereby authorized to be issued bonds to the amount of nineteen million four hundred and twenty-six thousand dollars ($19,426,000) should be irrevocably pledged and dedicated to the purpose of retiring and replacing the said bonds issued under the said First Mortgage, the said Second Mortgage, and the said Dakota Extensions Mortgage, and should be certified or issued only for that purpose, in manner and on conditions in said Consolidated Mort-

gage set forth; no part of which reserved bonds has ever been certified or issued; and all of which remain subject to certification and issuance for said purpose, as occasion may arise; and

WHEREAS, In the course of its business, the Manitoba Company has incurred sundry current liabilities, and accumulated sundry items of cash and other current assets, not hereinbefore referred to; which liabilities, cash and assets, appear upon its books of account and are stated in summary upon its General Ledger Balance Sheet of February 1, A. D. 1890; to which Balance Sheet and books of account reference is hereby made as to the details thereof; and

WHEREAS, At an adjourned annual meeting of the shareholders of the Manitoba Company, held in the city of New York on September 30, A. D. 1889, the following resolutions were adopted:

"RESOLVED, That the directors of this company, or the executive committee thereof, be and they are hereby authorized and empowered to make a lease to the Great Northern Railway Company, for a term of ninety-nine years or longer, of the entire railway and appurtenances, rolling stock and equipment, owned, leased or controlled by this corporation, and also to sell, transfer and convey to the Great Northern Railway Company so much as the directors or executive committee may deem expedient of the remaining real and personal property of this company, excluding its land grants, but including all stocks and bonds; subject, however, to the lien of the Collateral Trust Mortgage for $8,000,000 upon and in consideration of the following terms and conditions:

"I. That the Great Northern Railway Company shall issue preferred capital stock to the amount of $20,000,000, not to be increased without the consent of the holders of three-fourths of all such preferred stock outstanding, and to be entitled to dividends in preference to all other stock of such corporation at any

time to be created or issued, at the rate of not less than six per cent per annum, non-cumulative, free of all taxes which such corporation may be required by any law to withhold therefrom or to pay on account thereof.

"II. That the holders of stock in the St. Paul Minneapolis & Manitoba Railway Company shall have for a period, to be determined by the directors or executive committee, the privilege of subscribing, pro rata, to the whole of the preferred stock of the Great Northern Railway Company; they paying to that company $50 per share, in cash, or in Collateral Trust Mortgage Bonds of this company, the remaining $50 being paid by the transfer of assets, as hereinbefore mentioned, subject to the liens thereon; that they shall have the right to assign such privilege under such regulations as the directors or executive committee may prescribe; and that all such preferred stock, not thus subscribed for by stockholders of this company shall be issued to this company itself, or its assigns, in consideration of the said transfer of assets and upon payment, in like manner, of the further amount of $50 per share; and such shares if issued to this company, shall be disposed of by the directors or executive committee as they may deem expedient.

"III. That the Great Northern Railway Company shall guarantee payment of the principal and interest of all indebtedness of this company and of all bonds upon which this company is liable either as principal or as guarantor; and that the Great Northern Railway Company shall indemnify this company against the payment thereof, on condition that this company shall consent, at the request of the Great Northern Railway Company, to any extension of the time for the payment of principal of such indebtedness and bonds or the renewal thereof by the issue of new bonds, secured by mortgage, imposing no greater liability upon this company, upon reasonable terms and for any reasonable time, not exceeding the term of the said lease.

"IV. That the Great Northern Railway Company shall punctually pay a rent sufficient to provide for at least the following purposes, together with such others as the directors or executive committee of this company may deem necessary.

"1. The payment, as the same falls due, of all interest for which this company or its property is or may become liable upon bonds now outstanding, together with interest or dividends upon any bonds or preferred or debenture stock which this company may from time to time, with the consent of the Great Northern Railway Company, issue in exchange for bonds issued or guaranteed by this company; and also the payment of such further interest as this company may hereafter become liable for, either as principal or guarantor, with the consent of the Great Northern Railway Company.

"2. The payment, quarterly, on the first days of February, May, August and November, respectively, in each year during the term of the said lease, of dividends upon all the capital stock of this company now outstanding, namely, $20,000,000, par value, at the rate of six per cent per annum, free of all taxes which either corporation may be required by any law to withhold therefrom or to pay on account thereof.

"3. The payment of all taxes and assessments upon the property, gross earnings or income of this company, and of such of its current expenses as its board of directors or executive committee may prescribe by the terms of the lease.

"4. The deposit, with a trustee or trustees, of all shares of stock in railway or steamboat companies to be transferred under this arrangement to the Great Northern Railway Company, with a provision that the same shall not be sold, mortgaged, pledged or otherwise alienated, in whole or in part, without the assent of this company.

"5. That the Great Northern Railway Company shall comply with such other terms and conditions as, in the judgment of the directors or executive committee of this company, may be

necessary or expedient and be expressed in the said lease; and in such lease the directors or executive committee of this company may, if desired by the Great Northern Railway Company, bind the St. Paul, Minneapolis & Manitoba Railway Company not to exercise its borrowing or guaranteeing powers, in future, except upon the request or with the consent of the Great Northern Railway Company."

AND WHEREAS, At a meeting of the stockholders, and also at a meeting of the board of directors, of the Northern Company, held on November 11, A. D. 1889, the proposals embodied in the said resolutions of the shareholders of the Manitoba Company were accepted, and were directed to be carried out; and

WHEREAS, In pursuance of the terms of the said resolutions, and of the acceptance thereof by the shareholders and board of directors of the Northern Company, the preferred stock of the Northern Company has been subscribed for by the shareholders of the Manitoba Company, or their assigns, to the extent of two hundred thousand (200,000) shares; and the sum of fifty dollars ($50) in cash, or its equivalent, for each share subscribed, has been paid into the treasury of the Northern Company; and the Northern Company has paid off and redeemed the bonds of the Manitoba Company amounting to eight millions of dollars ($8,000,000) principal, commonly known as its Collateral Trust bonds whereby the stocks and bonds pledged and mortgaged to the Central Trust Company of New York, as trustee, by mortgage dated August 1, A. D. 1888, as security for the payment of said bonds, have been released from the lien thereof; and

WHEREAS, The several acts of legislature relating to the Manitoba Company, and to the Northern Company, respectively, authorize the doing of the acts hereby intended to be done, and the making of the engagements hereby intended to be made,

NOW THEREFORE, This Indenture witnesseth:

ARTICLE I.

Section 1. The Manitoba Company hereby leases to the Northern Company all the several railways and lines of railway owned by it, the Manitoba Company, the same being situated as hereinbefore recited, together with all the rights and franchises appertaining thereto, and all right of way, yard grounds and yards, station grounds and stations, grounds acquired and held for use in connection with its said railways, or any of them, whether acquired and held in its own name, or in the name of some other person or corporation for its use; side tracks, spur tracks, machine shops and repair shops, and the machinery, tools and implements therein or used in connection therewith; round houses, turn tables, water supply plant and equipment; warehouses, depots, and the furniture and fixtures thereof; fuel sheds, and all tools, implements, and tackle designed for use in connection therewith; stationary and portable engines, locomotive engines, passenger cars, baggage cars, mail cars, express cars, business cars, and cars of all other descriptions designed for use in passenger trains; box cars, stock cars, flat cars, coal cars, and cars of all other descriptions designed for use in freight trains; snow plows, steam shovels, wrecking cars, boarding cars, dump cars, Peteler cars, hand cars, push cars, and work cars of all other descriptions; track tools and engineering tools and instruments, owned by the Manitoba Company; also the general office building, located on the northerly side of Third street, in Saint Paul, now occupied by the Manitoba Company, with its furniture and fixtures; also, all other property, tools, implements, machinery, equipment, fixtures and appurtenances owned by the Manitoba Company, and acquired for use in connection with its railways, or any of the same, save as hereinafter excepted;

TO HAVE AND TO HOLD all and singular the premises, unto the Northern Company, its successors and assigns, for and during the full term of nine hundred and ninety-nine (999) years from and after twelve o'clock midnight of January 31, A. D. 1890, subject to the rentals, terms, conditions, exceptions and limitations hereinafter set forth.

Section 2. The said building located at the corner of Fourth and Wakouta streets, in Saint Paul, formerly used by the Manitoba Company as its general office building, together with the ground whereon the same stands, and the said timbered lands in Todd county, Minnesota, being subject to the lien of one or more of the said mortgages, are hereby reserved from the operation of the said lease; and all net revenues hereafter derived from the same, and all net proceeds of sales of the same, or any part thereof, hereafter realized, shall be paid over to the trustee or trustees in the said mortgage or mortgages entitled to the same, as part of the sinking fund provided for in such mortgage or mortgages.

Section 3. All locomotives, engines and cars of all descriptions, hereby leased, shall be numbered in accordance with the numbers of engines and cars of the several classes now used by the Manitoba Company. All other machinery, tools, implements, furniture and instruments coming under the operation of this lease, so far as may, from time to time, be required by the board of directors or executive committee of the Manitoba Company, shall have placed and maintained thereon such distinctive marks as the board of directors or executive committee of the Manitoba Company may reasonably require, to indicate the ownership thereof by the Manitoba Company; and all locomotive engines cars, machinery, tools, implements, furniture or instruments furnished by the Northern Company in replacement of similar articles so leased as hereinafter provided, shall also be numbered or marked in the same manner.

Section 4. The Northern Company shall, during the term of the said lease, operate the railways hereby leased in a prudent, faithful and diligent manner, due regard being given to the development of the traffic and other business thereof, and shall keep up and maintain the said railways and other leased property, so that the said railways and all other items of leased property shall, at all times, be in at least as high condition and state of efficiency as the same are at the date hereof; whenever, and as often as may be necessary, renewing and replacing the same, and the several parts thereof with others at least as valuable and efficient for the uses for which the same were procured or kept, as those replaced thereby; so that the said railways, and all their appurtenances and all and singular their tracks, terminals, stations, motive power, rolling stock, machine shops, water service, and all other appurtenances and equipment, shall at all times during the term of this lease be kept and maintained in a high condition and state of efficiency, and at least equal in condition and state of efficiency to that of the same existing at the present time. Every item of property procured or furnished by the Northern Company in replacement of a similar item hereby leased as above provided, shall at once, and without further act, become the property of the Manitoba Company, and subject to all liens to which such replaced article was subject at the time of such replacement, if so provided in the instruments creating such liens.

Section 5. Should any item of portable property hereby leased become obsolete, or unnecessary or undesirable for use in connection with the maintenance or operation of the said leased railways, or some of them, the Northern Company may, with the assent of the board of directors or executive committee of the Manitoba Company, and with the authorized assent of the trustee or trustees in any mortgage or mortgages forming a lien upon the same, sell the same at a fair and reasonable price; and, in event of such sale, the moneys arising therefrom, or the other

proceeds thereof shall belong and be paid to the Manitoba Company; and shall, at the request of the Northern Company, if made within a reasonable time, be reinvested in other articles of of property necessary or desirable for use in connection with the said leased railways; which last named articles shall, upon purchase, be transferred and conveyed to the Manitoba Company, free and clear of liens and incumbrances, save such as may be created by the Manitoba Company itself; and, upon acquisition by the Manitoba Company, shall become subject to this lease, and also to all liens to which the said property was subject at time of sale, if so provided in the instruments creating such liens.

In event of the failure of the Northern Company to request, within a reasonable time the reinvesement of the said moneys or other proceeds of sale, in articles necessary or desirable for use in connection with the said leased railways, such moneys or other proceeds, or the portion thereof remaining in hand, if only a part thereof shall have been so reinvested, shall, so far as the same shall suffice, be faithfully applied by the Manitoba Company as follows:

Firstly—To retirement for cancellation of its outstanding bonds, secured by mortgages forming liens upon the property so sold at the time of sale, and upon such proceeds after sale, in order of priority, by paying the same into the sinking or redemption funds provided by such mortgages; or, in absence of provisions for such sinking or redemption funds by purchase of such bonds in the open market, or by tender;

Secondly—To retirement for cancellation of any other outstanding interest bearing bonds, or forms of obligation for indebtedness of the Manitoba Company, secured by lien upon its properties, in order of priority, in manner by such bonds, or other obligations, or in any instrument creating the lien securing the same, provided; or, in absence of such provisions, by purchase in the open market, or by tender;

Thirdly—To retirement for cancellation of outstanding shares in the capital stock of the Manitoba Company, by purchase in the open market, or by tender.

All such purchases of bonds or stock for retirement and cancellation shall be made under such rules and regulations, and in such markets as shall seem most likely to insure the lowest prices and most favorable terms for the stock and bonds to be purchased.

Section 6. With the assent of a majority of all the directors in the Manitoba Company's board of directors, to be given at a regular or a specially called meeting of such board, and with the authorized assent of the trustee or trustees in, or beneficiaries under, any mortgage or mortgages, or other instrument, at the time forming a lien or liens upon the same, in case such sale shall not be made subject to such lien or liens, the Northern Company, at a fair and reasonable price, sell the whole or any part of either of the said leased railways, or of any other parcel of the said leased real property, which, in the opinion of the Northern Company, and of the said assenting majority of the Manitoba Company's directors shall have become unnecessary, or undesirable, or inconvenient for use in connection with the said leased system of railways; and the Manitoba Company shall make, or join in making, the necessary conveyances thereof; and, in case of such sale, the moneys arising therefrom, or the proceeds thereof in other form than money, shall belong to the Manitoba Company and shall be paid thereto, in absence of liens upon the same, by mortgage or otherwise, requiring their payment to other parties; and such moneys or other proceeds may, unless differently provided in some mortgage, or other instrument forming a lien thereon, with the concurrence of the Northern Company, and the majority of directors of the Manitoba Company aforesaid to be expressed in manner aforesaid, be reinvested, either by way of construction or purchase, or both, in other railways, railway plant, lands or structures, rea-

sonably desirable, and reasonably adapted and convenient for use in connection with the system of railways hereby leased; which other railways, railway plant, lands or structures shall, when and as acquired or constructed, become vested in, and be conveyed to the Manitoba Company by suitable instruments of conveyance or otherwise as the exigencies of particular cases may require; and shall become subject to this lease, and also to the lien of any mortgage or mortgages, or other instrument, which had formed a lien or liens upon the railway or other property so sold, at the time of sale, if so provided in such mortgage or mortgages, or other instrument.

In event of failure to reinvest the proceeds of any such sale, or any part thereof, as above provided, within a reasonable period, such proceeds shall be used by the Manitoba Company, so far as the same shall suffice, in the same manner as provided in the next preceding section of this Article, with reference to the proceeds of sales of leased portable property which shall not have been reinvested as in said section provided. Moneys arising from expropriations, under governmental authority, of any of the properties hereby leased, whether real or personal, shall be disposed of in the same manner as if the same property had been sold, as hereinbefore provided, by the parties.

Section 7. The Northern Company shall also, at its own cost, furnish and supply all tracks, structures and plant, upon the leased property, and also all equipment, machinery and tools, in addition to the tracks, structures, plant, equipment, machinery and tools hereby leased, and the renewals and replacements thereof hereinbefore provided for, that may at any time during the term of the said lease be needed for the prompt and efficient handling of the traffic, and transaction of the business, of the system of railways hereby leased, due regard being given to the volume of such traffic and business, and to the proper and prudent development thereof, or that may be required by law.

All such additional tracks, structures and plant of a permanent nature, placed upon the leased property in pursuance of this section, shall become and form parcel of the property owned by the Manitoba Company; subject, however, to the leasehold interest therein of the Northern Company created by this instrument; but the materials in all tracks, structures and plant, merely temporary in character, placed upon the leased property by the Northern Company, and all additional equipment, machinery and tools of a portable nature, provided by the Northern Company in pursuance of this section, shall remain the property of the Northern Company.

Nothing herein contained shall prevent the payment for such additional tracks structures, plant, equipment, machinery, or tools out of the proceeds of any bonds, or other evidences of debt which may hereafter be issued by the Manitoba Company, at the request, and under the guarantee of the Northern Company, if such use of such proceeds shall be consistent with the terms of such bonds and of the mortgage or other instrument securing payment thereof; but in event of the payment for any such additional tracks, structures, plant, equipment, machinery, or tools, out of any such proceeds, the ownership of the same shall vest in the Manitoba Company, and the same shall become and be subject to the operation of the lease herein contained; and the Northern Company shall not, in any event, become entitled to reimbursement for any part of the cost thereof.

Section 8. The lease aforesaid is made by the Manitoba Company, and taken by the Northern Company, subject to the lien of the said mortgage made by the Saint Paul and Pacific Railroad Company, and also subject to the respective liens of the said several mortgages made by the Manitoba Company; and also subject to the rights of any and all parties other than the parties hereto, which have accrued, or may accrue, under either or all of the said contracts with the Eastern Railway Company of Minnesota, the Northern Pacific, Fergus and Black Hills

Railroad Company, the Little Falls and Dakota Railroad Company, the Minneapolis and Saint Louis Railway Company, the Saint Paul, Stillwater and Taylor's Falls Railway Company, the Chicago, Saint Paul, Minneapolis and Omaha Railway Company, the Northern Pacific Railroad Company, the Minnesota, Saint Croix and Wisconsin Railroad Company, the Wisconsin Central Company, the Chicago, Burlington and Northern Railroad Company, the Minnesota and Northwestern Railroad Company, the Minneapolis, Saint Paul and Sault Sainte Marie Railway Company, the Saint Paul Union Depot Company, the Minneapolis Union Railway Company, the Western Union Telegraph Company, the Saint Anthony Elevator Company and the American Express Company, and under either or all the said licenses and permits, to sundry persons and corporations, for the placing upon the right of way, or other grounds of the Manitoba Company, of grain elevators and warehouses, lumber yards, fuel yards, oil sheds and other industries, or under the said contracts with divers persons and corporations for the performance of switching and other traffic and operating services, and for the exchange of traffic; and the Northern Company hereby assumes all liabilities and obligations that have arisen, or that could or might hereafter arise during the term of said lease, against the Manitoba Company, under all or any of the said mortgages, contracts, licenses and permits, and shall save the Manitoba Company harmless on account thereof; and, so long as it continues to faithfully fulfill its obligations in this instrument contained, shall be entitled to realize and enjoy all rights, revenues and other advantages, accruing or that might accrue, to the Manitoba Company, through or on account of the same during the term of the said lease.

ARTICLE II.

Section 1. The Manitoba Company hereby sells and transfers to the Northern Company all the stocks of fuel, and of

materials of all kinds, acquired or intended for use or consumption, in connection with the maintenance or operation of the railways and property hereby leased, on hand at the date of this instrument, and also all contracts for the purchase of any such fuel or materials, with any and all persons and corporations, existing and unfulfilled at the date of this instrument; of which contracts a duplicate list has been prepared, one copy whereof has been delivered to the Northern Company, and the other retained by the Manitoba Company; and the Northern Company hereby assumes all obligations of the Manitoba Company, under the said contracts, and shall hold the Manitoba Company harmless on account of the same.

Section 2. The Manitoba Company hereby sells, assigns and transfers unto the Northern Company all the right, title, and interest of the Manitoba Company in and to the following mentioned securities and property, that is to say:

The said bonds of the Willmar and Sioux Falls Railway Company, being two thousand six hundred and twenty-five (2,625) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1 to 2,625 inclusive;

The said bonds of the Duluth, Watertown and Pacific Railway Company, being one thousand three hundred and seventy-five (1,375) bonds, for the principal sum of one thousand dollars ($1 000) each, numbered from 1 to 1,375 inclusive;

The said Montana Extensions bonds of the Manitoba Company, being six (6) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1,917 to 1,921 inclusive, and 3,694;

The said Consolidated Mortgage bonds of the Manitoba Company, being seven hundred and fifty (750) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 25,951 to 26 700 inclusive;

The said bonds of the Montana Central Railway Company, being five hundred (500) bonds, for the principal sum of one

thousand dollars ($1,000) each, numbered from 4,501 to 5,000 inclusive;

The said First Mortgage bond of the Manitoba Company, being one (1) bond, for the principal sum of one hundred dollars ($100), numbered 1,146;

The said bonds of the County of Todd, being three hundred and four (304) bonds, for the principal sum of one hundred dollars ($100) each numbered from 1 to 304 inclusive;

The said bonds of the Village of Hutchinson, being twelve (12) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1 to 12 inclusive;

The said bonds of the Town of Breckenridge, being three (3) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1 to 3 inclusive, and one (1) bond, for the principal sum of thirteen hundred dollars ($1,300), numbered 4;

The said bonds of the County of Pipestone, being thirty (30) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1 to 30 inclusive;

The said bonds of the Town of Minnesota Falls, being two (2) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered 1 and 2;

The said bonds of the Town of Sandnes, being two (2) bonds for the principal sum of one thousand dollars ($1,000) each, numbered 1 and 2;

The said bonds of the Minnesota Transfer Railway Company, being one hundred and nine (109) bonds, for the principal sum of one thousand dollars ($1,000) each, numbered from 1 to 63 inclusive; from 505 to 536 inclusive; from 761 to 766 inclusive; from 809 to 815 inclusive; and 865;

The said fifty-six (56) shares in the capital stock of the Manitoba Company, the same being evidenced by stock certificate numbered A 10,777;

The said fourteen hundred and ninety (1,490) shares in the capital stock of the Climax Coal Company, the same being evi-

denced by stock certificates numbered 1, 5, 6, 7, 8 and 9;

The said one hundred and sixty-seven (167) shares in the capital stock of the Lake Superior Terminal and Transfer Railway Company, the same being evidenced by stock certificates numbered 17, 18, 19, 22, 23, 37, 49, 57, 63, 70, 79, 85, 93, 100 and 107;

The said two thousand five hundred (2,500) shares in the capital stock of the Sand Coulee Coal Company, the same being evidenced by stock certificates numbered 1 to 6 inclusive;

The said fifteen hundred (1,500) shares in the capital stock of the Saint Paul Foundry Company, the same being evidenced by stock certificates numbered 3, 5, 6, 12 and 16;

The said one hundred and sixteen (116) shares in the capital stock of the Fort Benton Bridge Company, the same being evidenced by stock certificate numbered 47;

The said land contracts for the sale of certain of its granted lands owned as aforesaid by the Manitoba Company, free from the lien of any of its said mortgages; of which contracts duplicate lists have been made and disposed of as aforesaid; the principal sum remaining unpaid on said contracts at the date hereof being, approximately, the sum of six hundred and twenty thousand dollars ($620,000); also

All the said beneficial right and title of the Manitoba Company to the said lands granted by the State of Minnesota to the Minneapolis and Saint Cloud Railroad Company.

ARTICLE III.

The title to the said shares in the capital stock of the Minnesota Transfer Railway Company, and the interests and rights in the properties and facilities of the said company, vested in the Manitoba Company by reason of its ownership of the said shares, shall, for mutual convenience, be retained by the Manitoba Company until transferred to the Northern Company, as hereinafter provided; but so long as the Northern Company

shall continue to faithfully perform its covenants and obligations contained in this instrument, the Manitoba Company shall pay over all revenues therefrom to the Northern Company, from time to time as the same shall be received by the Manitoba Company, and shall, from time to time at the request of the Northern Company, deliver to it all orders and powers of attorney needful or desirable for use by it in obtaining the said revenues directly from the said Transfer Company, and also such proxies as may be necessary to enable the Northern Company to freely exercise the voting powers arising out of, or connected with the said shares, according to its own discretion, so far as relates to the conduct of the ordinary business of the said company, and so far as permitted by the by-laws of the Minnesota Transfer Railway Company. The Northern Company shall not, however, without the express and specific consent of a majority of all the directors in the Manitoba Company's board of directors, given at a regular or a specially called meeting of such board, concur in, or suffer to be done by means of any such proxy, or the representative of the Northern Company in the directorate of the Minnesota Transfer Railway Company, any act by such company whereby any portion of the real property of such company, essential for the transaction of the business which it has been organized to transact, shall be alienated, in whole or in part.

The Northern Company shall, so long as it shall continue to faithfully perform its covenants and obligations contained in this instrument, have and enjoy, for the handling of the traffic of the said leased railways, all the rights and facilities, upon the grounds of the Minnesota Transfer Railway Company, which the Manitoba Company would be entitled to have and enjoy in respect to the same or similar traffic by reason of its ownership of the stock and bonds of the said Transfer Company; the Northern Company making all payments, on account of the use and enjoyment of such facilities, which the Manitoba Company would be required to make by the by-laws, rules and regulations

of the said Transfer Company, in time and manner as required by such by-laws, rules and regulations, and satisfying all and singular the other requirements of such by-laws, rules and regulations which would be incumbent upon the Manitoba Company itself if handling the same or similar traffic.

The certificates for the said shares shall forthwith be placed in the possession and custody of the Trustee, to be by it held and retained for the use and benefit of the other parties hereto, respectively, in accordance with the provisions of this instrument; and the same shall not be subject to pledge, mortgage, sale or other alienation, during the term of this lease, by either of said parties, save as next below provided, that is to say:

The said shares of stock may, subject to the by-laws and regulations of the Minnesota Transfer Railway Company, be pledged or mortgaged with like assent of the Manitoba Company, or may be sold, under like circumstances, limitations and conditions, and, in event of any such sale, the proceeds thereof shall be disposed of in like manner, as provided in Article I of this instrument respecting the sale, and the disposition of the proceeds of the sale, of the said leased railways and other real property.

The title to the said shares, unless prevented by the by-laws of the Minnesota Transfer Railway Company, shall, at the request of the Northern Company, be assigned to the Trustee, subject to the lien of the said Consolidated Mortgage, to be by the Trustee held in trust for the benefit of the parties hereto, in the same manner as provided with reference to the shares in the stock of certain other companies, the title whereof is assigned to the Trustee by the next succeeding Article of this instrument.

So long as the said stock shall stand in the name of the Manitoba Company, all certificates evidencing the same shall, at the request of the Northern Company, have indorsed thereon the statement that the same is held subject to the trusts created by, and to the provisions of, this instrument.

ARTICLE IV.

Section 1. The Manitoba Company hereby assigns and transfers to the Trustee all the following mentioned stocks, that is to say:

The said fifty thousand (50,000) shares in the capital stock of the Eastern Railway Company of Minnesota, the same being evidenced by stock certificates numbered 1, 2, 3, 12, 13 and 15;

The said fifty thousand (50,000) shares in the capital stock of the Montana Central Railway Company, subject to the lien of the said Montana Extensions Mortgage, the same being evidenced by stock certificates numbered 2, 3, 4, 5, 7 and 9;

The said fifteen thousand (15,000) shares in the capital stock of the Willmar and Sioux Falls Railway Company, the same being evidenced by stock certificates numbered 1 to 9 inclusive;

The said seven thousand three hundred (7,300) shares in the capital stock of the Duluth, Watertown and Pacific Railway Company, the same being evidenced by stock certificates numbered 1 to 9 inclusive;

The said fifteen thousand (15,000) shares in the capital stock of the Northern Steamship Company, the same being evidenced by stock certificates numbered 1, 3, 5, 6 and 7;

The said five thousand (5,000) shares in the capital stock of the Minneapolis Union Railway Company, subject to the lien of the said Consolidated Mortgage, the same being evidenced by certificates numbered 1, 3, 9, 10, 11, 12 and 14;

And the said seven hundred (700) shares in the capital stock of the Saint Paul Union Depot Company, subject to the lien of the said Consolidated Mortgage the same being evidenced by certificates numbered 1, 21, 45, 50 and 105.

TO HAVE AND TO HOLD the title to all and singular the said shares, in trust for the use and benefit of the parties hereto, in accordance with the provisions of this instrument.

Section 2. All certificates, at any time during the term of

the said lease, evidencing ownership of the said shares of stock, shall, at the request of the Manitoba Company, have indorsed thereon the statement that the same are held subject to the trusts created by, and to the provisions of, this instrument.

The Trustee shall, however, at the request of the Northern Company, from time to time transfer to persons designated by that company to act as directors of either of the companies, shares in the stock of which are assigned by this instrument, a sufficient number of shares to qualify such persons as directors of such companies, under such conditions and restrictions as may be reasonably necessary to fully protect the rights of the parties hereto.

Section 3. It being desirable that the railways and other facilities of each of the said railway companies named above in this Article, and the steamship line of the said Steamship Company, and the rights to the use of the facilities of the Saint Paul Union Depot Company, belonging to the Manitoba Company, shall be permanently retained as parts of the transportation system contemplated by the said resolutions of the Manitoba Company and the Northern Company, respectively, and by this instrument, the said shares of stock by this Article assigned and transferred shall be inalienable, during the term of the said lease, except as stated next below, that is to say:

The said shares in the stock of either of the said companies may be pledged or mortgaged, with like assent of the Manitoba Company, or may be sold, under like circumstances, limitations and conditions, and, in event of any such sale, the proceeds thereof shall be disposed of in like manner, as provided in Article I of this instrument respecting the sale and the disposition of the proceeds of the sale of the said leased railways, and other real property.

Section 4. So long as the Northern Company shall continue to faithfully perform its covenants and obligations contained

in this instrument, the Trustee shall pay over all revenues arising from the said shares by this Article assigned, to the Northern Company, from time to time, as the same shall be received by the Trustee and shall, from time to time, at the request of the Northern Company, deliver to it all orders and powers of attorney needful or desirable for use by it in obtaining the said revenues directly from the said companies respectively; and also such proxies as may be necessary to enable it to freely exercise the voting powers arising out of, or connected with, the said shares, according to its own discretion, with the limitation stated in the next succeeding section.

Section 5. The Northern Company shall not, without the express and specific consent of a majority of all the directors in the board of directors of the Manitoba Company, given at a regular or a specially called meeting of such board, concur in, or suffer to be done by means of any such proxy, or of any board of directors elected thereby, any act by either of the said railway companies, including the Minneapolis Union Railway Company, or by the Saint Paul Union Depot Company, whereby the railway or railways thereof, or any portion of the same, or any other real property of such company, necessary for the proper and efficient handling of the business of its railway or railways, or of its depots or terminal facilities, shall be alienated.

Either of the said steamships of the said Steamship Company may, however, be sold by that company, with the assent of the Northern Company, and of the board of directors or executive committee of the Manitoba Company, whenever such vessel shall become disabled, or whenever for any other reason it shall not be deemed advantageous to the Steamship Company, or to the system of railways forming the subject of this instrument, to continue the running of the same; but, in event of the sale of either of the said steamships the proceeds of such sale shall be paid over to the Trustee; and, unless the same shall, within a

reasonable time, be reinvested by the Steamship Company, with the concurrence of the Manitoba Company, and of the Northern Company, in other vessel property, for use in said steamship line, the same shall be applied by the Trustee, in the same manner as provided in Article I of this instrument with reference to the disposition of the proceeds of the sales of leased property, which shall not have been reinvested;

And in event of the alienation, as hereinbefore provided, of the railway or railways, or any part thereof, or either of the said railway companies mentioned in this Article, including the Minneapolis Union Railway Company, or of any other real property of either of the said companies, the proceeds of such sale shall, in absence of liens thereon, by mortgage or otherwise, requiring the payment thereof to other parties, be paid over to the Trustee hereunder; and, unless such proceeds shall, within a reasonable time, be lawfully reinvested by the company which had owned and sold the property from which such proceeds arose, with the assent of the Northern Company and of the Manitoba Company, given in the mode hereinbefore required for an assent to the sale out of which such proceeds arose, in other railroad property convenient for use in the railway system by this instrument leased, such proceeds shall be used for retiring for cancellation the interest bearing debt of the company from sale of whose property such proceeds shall have arisen, forming a lien upon the property of such company; and the surplus, if any, shall be applied by the Trustee in the same manner as provided in Article I of this instrument, with reference to the disposition of the proceeds of the sales of leased property which shall not have been reinvested.

Moneys arising from expropriation under governmental authority, of either of the said steamships, or of the railway or railways, or any part thereof, of either of the railway companies named in this Article, including the Minneapolis Union Rail-

way Company, or of the real property, or any part thereof, of either of said companies, shall be disposed of as hereinbefore provided for the disposition of the proceeds of sales of such railways or property.

Insurance moneys accruing to the Steamship Company, for loss of or injuries to any of the said vessels, and damages collected for destruction of, or injuries to, any of the same, shall be treated in the same manner as moneys arising from sales of said vessels, as above provided.

All locomotives, engines and cars, of all descriptions, also all other machinery, tools, implements, furniture and instruments, so far as may from time to time be required by the board of directors or executive committee of the Manitoba Company, belonging to either of the said railway companies in this Article mentioned, at the date hereof; also, all vessels, with their machinery, tackle, furniture and fittings, so far as may be required by the said board or executive committee, belonging to the said Steamship Company at the date hereof; and all locomotives, engines, cars, machinery, tools, implements, furniture and instruments, and also all vessels, with their machinery, tackle, furniture and fittings, furnished as renewals or replacements as in this Article provided, shall have placed and maintained thereon names, letters or marks, as said board or executive committee may reasonably require, to indicate ownership thereof, by such railway company, or the said Steamship Company, as the case may be.

Any item of fixed or portable property of either of the railway companies treated of in this Article, including the Minneapolis Union Railway Company, which shall have become obsolete, or unnecessary or unfit for use in connection with the railways, facilities or plant of such company, may, with the assent of the board of directors or executive committee of the Manitoba Company, be sold at a fair and reasonable price; and the proceeds of any such sale shall be disposed of in the

manner herein provided for disposal of the proceeds of sales of the railways of the said companies, and of the other real property thereof necessary for the transaction of the business thereof; save that the proceeds of sales of portable property may be reinvested in other portable property, to be used in connection with the railway or other plant of the company owning the same at the time of sale.

Section 6. Unless relieved from so doing by the assent of a majority of all the directors in the board of directors of the Manitoba Company, to be given at a regular or a specially called meeting of such board, the Northern Company shall, during the term of this lease, operate, or cause to be operated, in a prudent, faithful and diligent manner, the railways and other plant and facilities of the several railway companies in this Article above mentioned, including those of the Minneapolis Union Railway Company, due regard being given to the development of the traffic and other business thereof; and shall maintain and keep up, or cause to be maintained and kept up, the said railways and other facilities, and the equipment thereof, whenever, and as often as may be necessary, renewing and replacing, or causing to be renewed and replaced, the same, and the several parts thereof, with others, at least as valuable and efficient for the uses for which the same were procured or kept, as those replaced thereby; so that the said railways, and all their appurtenances, and all and singular their tracks, terminals, stations, motive power, rolling stock, machine shops, water service, and all other appurtenances and equipment, shall at all times during the term of this lease, be kept and maintained in a high condition and state of efficiency, and at least equal in condition and state of efficiency to that of the same existing at the date hereof.

The Northern Company shall also, unless relieved from so doing in manner aforesaid, furnish and supply, or cause to be furnished and supplied, all tracks, structures and plant, upon

the property of each of the said railway companies, including that of the Minneapolis Union Railway Company, and also all equipment, machinery and tools, in addition to the tracks, structures, plant, equipment, machinery and tools belonging to such other company at the date hereof, that may, at any time during the term of the said lease, be required by law, or be needed for the prompt and efficient handling of the traffic and transaction of the business of the railway or railways of such company, due regard being given to the volume of such traffic and business, and to the proper and prudent development thereof. All such additional tracks, structures and plant, of a permanent nature, placed upon property of either of the said other companies by the Northern Company in pursuance of this section, shall become and form parcel of the property owned by such other company; but the materials in all tracks, structures and plant, merely temporary in character, placed upon the property of either of the said other companies, and all additional equipment, machinery and tools of a portable nature, provided by the Northern Company in pursuance of this section, shall remain the property of the Northern Company.

Section 7. The Northern Company shall also, unless relieved from so doing in manner provided in the next preceding section, pay, or cause to be paid, the principal and interest of all bonds, and of all indebtedness of every other nature, of each of the railway companies in this Article mentioned, including the Minneapolis Union Railway Company, and of the said Steamship Company, outstanding or existing at the date hereof, or which shall be incurred or created at any time hereafter during the term of the said lease, including all taxes and assessments of every description against the capital stock or the property, earnings or receipts of either of said companies, at or before the time when the same shall become due;

so that no part of the railways, steamships or other property of either of the said companies shall be subjected to seizure or sale by judicial or administrative proceedings, to satisfy any such bond, indebtedness, tax or assessment; and shall also perform and satisfy, or cause to be performed and satisfied, all duties and obligations of every other nature, imposed by law upon the said companies, or either of them, at any time during the term of the said lease.

Section 8. In event of any increase in the capital stock of either of the companies in this Article mentioned, such additional stock shall be transferred to the Trustee, to be by it held and administered in the same manner as in this Article provided with regard to the shares of stock by this Article transferred to the Trustee, it being the intent of the parties hereto that no stock in either of the said companies shall, without the assent of a majority of all the directors in the board of directors of the Manitoba Company to be given at a regular or a specially called meeting of such board, be issued or sold to any person or corporation, save to the Manitoba Company or the Northern Company.

The Northern Company shall not, during the term of the said lease, permit either of the said other companies treated of in this Article to increase its indebtedness secured by, or forming a lien upon, the property or franchises of such company, save for the purpose of extending, either by construction or purchase the railways, properties, facilities, plant or equipment of such company; and for such purpose only to the amount of the fair and reasonable cost and value of such extensions, and with the approval first had and obtained of a majority of all the directors in the board of directors of the Manitoba Company, to be given at a regular or specially called meeting of such board.

ARTICLE V.

Section 1. The title to the said parcel of land situated in Hennepin and Ramsey counties, Minnesota, now held by the Minneapolis Trust Company in trust for the Manitoba Company and the Saint Anthony Eelevator Company, according to their resepctive interests, shall remain in said Trust Company until the same shall be disposed of in accordance with the terms of the contracts between the said parties to such trust; but, while the Northern Company shall continue to faithfully perform and abide by its obligations contained in this instrument, all moneys accruing to the Manitoba Company from the revenues of said parcel of land, after deducting taxes and assessments, if any the Manitoba Company shall be required to pay, and the expense of protecting the title to the same, and of collecting the revenues therefrom, and of performing any other duties with reference thereto, imposed by law, if any there should be, or from the purchase thereof by the said Saint Anthony Elevator Company, as provided in the said contracts relating thereto, after making like deductions therefrom, shall, from time to time, as the same are received by the Manitoba Company, be paid over and belong to the Northern Company; and the Northern Company shall perform and comply with all covenants and obligations of the Manitoba Company in the said contracts contained, relating to the performance of switching, transfer and other operating services for the said Elevator Company, and for others desiring to handle traffic to or from the elevator and warehouses of the said Elevator Company located on the said parcel of ground.

Section 2. The title to those other parcels of land hereinbefore referred to, that is to say;

The said Hotel Lafayette, and grounds appertaining thereto;

The said Minnetonka Beach Lands;

The said pine lands located in Mille Lacs county, State of Minnesota; and

The said sundry lots and unplatted lands included within sundry townsites, and not forming parts of any lands granted to the Manitoba Company or its predecessors in interest; shall be retained by the Manitoba Company; but while the Northern Company shall continue to faithfully perform and abide by its obligations contained in this instrument, all moneys accruing to the Manitoba Company from the revenues of the said parcels of land, if any, or from sales thereof, after deducting taxes and assessments against said property, if any, and the expense of caring for the same, and of protecting the title thereto, and of insuring and repairing any buildings, fences, or other structures situated on said lands, and of performing any other duties with reference thereto, imposed by law, shall, from time to time, as the same are realized by the Manitoba Company, be paid over and belong to the Northern Company.

ARTICLE VI.

Section 1. As compensation and rental for the leases and transfers in this instrument made by the Manitoba Company to the Northern Company, the Northern Company shall, during the term of this lease, well and faithfully make to or for the Manitoba Company the following payments, from time to time, that is to say:

First. All interest, as the same falls due during the term of this lease, for which the Manitoba Company, or its property, is or may become liable, upon bonds now outstanding; also, all interest or dividends, as the same fall due during the terms of this lease, upon any bonds or debenture stock which the Manitoba Company may, from time to time, with consent of the Northern Company, issue in exchange for bonds previously issued or guaranteed by the Manitoba Company; also, as the same falls due during the term of this lease, all further

interest for which the Manitoba Company may hereafter become liable, either as principal or guarantor, with the consent of the Northern Company.

All such payments shall be made by the Northern Company in the coin or currency wherein such interest or dividend shall be payable, according to the instrument providing for the payment of the same; but the authorized delivery and surrender to the Manitoba Company of the cancelled coupons evidencing the right to receive any such interest or dividends, as the case may be, shall be equivalent to the payment of such interest to the amount of such coupons, in the coin or other currency required to pay the same.

Second. Quarterly, on the first days of February, May, August and November, respectively, in each year during the term of this lease, a sum of money, in gold coin of the United States, of the present standard of weight and fineness, equal to one and one-half (1½) per cent upon the par value of all the capital stock of the Manitoba Company at the time outstanding, which par value shall never exceed the sum of twenty millions of dollars ($20,000,000). The said sum shall be paid, free from all taxes which either corporation may be required by any law to withhold from dividends declared on the Manitoba Company's capital stock, or to pay on account thereof; the said sum, when and as received by the Manitoba Company, to be by it faithfully used for the exclusive purpose of paying, on each of the days aforesaid, a quarter-yearly dividend of one and one-half (1½) per cent upon the par value of all its capital stock then outstanding, free from all taxes which either the Northern Company or the Manitoba Company may be required by law to withhold therefrom, or to pay on account of such dividend.

Third. All taxes and assessments upon the property, gross earnings or income of the Manitoba Company, or for which

that company or its property might be liable, levied or assessed, or falling due during the term of this lease, when and as the same shall become due and payable; all such payments to be made directly to the persons or officers lawfully entitled to receive or collect such tax or assessment, and in the coin or other currency in which the same are lawfully payable.

Fourth. On the first days of each month during the term of this lease, at its office in the city of Saint Paul, the sum of one thousand five hundred dollars ($1,500), or such portion thereof as the board of directors or executive committee of the Manitoba Company shall require to be paid, to be used by the Manitoba Company for paying the expenses of maintaining its organization, and of the transaction of its necessary business.

The said payments on account of interest upon bonds and other indebtedness, and of interest or dividends upon debenture stock, shall be made at the places where such interest and dividends are made payable by the instruments providing for the payment thereof.

The said payments on account of dividends upon the stock of the Manitoba Company shall, at the request of the Manitoba Company, be made at some place in the city of Saint Paul or in the city of New York; and all payments of interest and dividends provided for in this Article shall, at the request of the Manitoba Company, be made by the Northern Company directly to the persons or corporations entitled to receive the same from the Manitoba Company, through some office or agency of the Northern Company at the place of payment; so that the Manitoba Company shall be relieved of all expense in connection with the making of said payments.

ARTICLE VII.

Section 1. The Northern Company hereby assumes and agrees to pay, as its own indebtedness, the principal and interest of all the said bonds issued by the Saint Paul and Pacific

Railroad Company, now outstanding; and also the principal and interest of all the said bonds issued by the Manitoba Company, now outstanding; and also the principal and interest of all bonds, and evidences of debt of every other form, that may hereafter be issued by the Manitoba Company for renewing, replacing or refunding the indebtedness evidenced by any of the said bonds now outstanding, or that may hereafter be issued by the Manitoba Company for any other purpose, at the request of the Northern Company; and the Northern Company shall hold the Manitoba Company harmless from any and all liability on account of the principal or interest of any of the said bonds now outstanding, or on account of the principal or interest of those hereafter issued in pursuance of the provisions of this instrument.

Section 2. The Northern Company hereby assumes all liabilities and obligations growing, or that may grow, out of the several guaranties by the Manitoba Company of payment of the principal and interest of the said bonds heretofore issued by the Minneapolis Union Railway Company, the Montana Central Railway Company, or the Eastern Railway Company of Minnesota; or out of the guaranty by the Manitoba Company of the payment of the principal and interest of any further issue of the bonds authorized by the said mortgage of the Minneapolis Union Railway Company, up to the limit of three millions of dollars, fixed by said mortgage; or out of the guaranty by the Manitoba Company of the principal and interest of any bonds that may be issued hereafter by either of the said three railway companies, in renewal of, or for refunding, the bonds so previously guaranteed by the Manitoba Company, or any of them; or out of the guaranty by the Manitoba Company of any other issue of bonds, or evidences of indebtedness in any other form, that may be made at the request of the Northern Company; and the Northern Company shall hold the Manitoba Company harmless on account of any such guaranty.

Section 3. The Manitoba Company shall, at the request of the Northern Company, cause the proper steps to be taken by its board of directors for the issuance and guaranty, in the mode provided in the said mortgage heretofore executed by the Minneapolis Union Railway Company, of the remaining three hundred thousand dollars ($300,000) of bonds capable of being issued under said mortgage, whenever, and as fast as, additional issues of such bonds shall reasonably be required for raising funds for making necessary additions to the grounds, tracks, structures and other plant of the Minneapolis Union Railway Company.

The Manitoba Company shall also, at the request of the Northern Company, from time to time, issue bonds, forming part of the nineteen million four hundred and twenty-six thousand dollars ($19,426,000) of bonds, by the terms of the said Consolidated Mortgage reserved for the purpose of retiring and replacing the said earlier issues of bonds of the Manitoba Company, as fast as it may become necessary or desirable to issue the same, for retiring an equal amount of bonds of said earlier issues now outstanding, in view of the common interests of both companies; and to an aggregate amount not exceeding the principal of all the said bonds of earlier issues, hereafter retired with such Consolidated Mortgage bonds, or the proceeds thereof.

Nothing contained in this instrument shall be construed as preventing the issuance by the Manitoba Company, with the concurrence and at the request of the Northern Company, for the purposes contemplated, and under the conditions imposed by the said Consolidated Mortgage, and Montana Extensions Mortgage, respectively, of bonds secured by said mortgages, respectively, in addition to those heretofore issued, to the full limit of the amount fixed in said mortgages, respectively; but no issue of bonds under either of said mortgages, increasing the aggregate principal sum thereof now outstanding, except issues

made under the said provisions of the said Consolidated Mortgage, for the purpose of retiring the said prior issues of bonds, shall be made, except as authorized by a majority of all the directors in the Manitoba Company's board of directors, to be given at a regular or a specially called meeting of such board.

All railways and other railway properties acquired by the Manitoba Company, with such additional issues of bonds secured by the said Consolidated Mortgage or the said Montana Extensions Mortgage, shall, upon acquisition thereof, become subject to the operation of the lease in this instrument contained.

The Manitoba Company shall also, at the request of the Northern Company, assent to extensions of the time limited for the payment of the principal of any of its indebtedness, payment whereof is herein assumed by the Northern Company, or to the renewal thereof by the issue of new bonds, secured by new mortgages upon the railways and railway property of the Manitoba Company, upon reasonable terms, and for any reasonable length of time, not exceeding the term of this lease.

PROVIDED, That such new bonds or other new evidences of debt shall not increase either the aggregate principal of the debt of the Manitoba Company at the time outstanding, or the aggregate interest charges thereof.

And the Manitoba Company shall, at the expense and request of the Northern Company, execute and issue all such new bonds or other evidences of debt, and all such new mortgages of its railways and railway property securing the same, as may be reasonably necessary for the economical and effectual accomplishment of such refunding operations, under such reasonable rules and regulations as it may see fit to adopt for the protection of its own rights and interests, and those of its stockholders, in the premises.

Section 4. The Manitoba Company shall retain the said

cash now in its hands, and its said other current assets, in its own possession, and shall collect and realize upon such assets as fast as practicably and economically may be; and, out of such cash, and the net proceeds of said other current assets, shall pay off and discharge its said current liabilities, to the extent of such cash and net proceeds.

Should any residue remain from the said cash, and the net proceeds of said other current assets, after full payment of the said current liabilities, such residue shall be paid over to the Northern Company; but, should the Manitoba Company fail, within a reasonable time, to realize sufficient net proceeds from said assets to fully pay off and discharge all said current liabilities, such deficiency shall, at the request of the Manitoba Company, be made good by the Northern Company; and thereupon and thereafter, the net proceeds of all said current assets then remaining in the hands of the Manitoba Company unrealized, shall, as fast as realized, be paid over to the Northern Company, or, at the option of the Northern Company, such unrealized assets shall be turned over and transferred to the Northern Company.

Section 5. It is believed by he Manitoba Company that it has no liabilities or obligations outstanding at the date hereof, save those hereinbefore in this instrument mentioned, and save claims for loss of and damage to property, and injuries to persons, arising out of the maintenance and operation of its railways; but, should the existence of any other or additional liability or obligation of said company, or against its property, be made to appear, or hereafter during the term of the said lease arise from any act or omission of the Northern Company, or from any act or omission of any other person or corporation maintaining or operating the railways hereby leased, or any of them, or any part of them, the payment, or the satisfaction of the same in other form, shall be assumed by the Northern

Company, and the Northern Company shall save the Manitoba Company harmless on account thereof. And the Northern Company shall assume and bear the cost of the defense of any and all suits and other proceedings, growing out of or relating to the construction, maintenance, or operation of the said railways, or either of them, now pending or hereafter begun, against the Manitoba Company, and shall, at its own cost, satisfy and perform all final orders, judgments, and decrees therein; and shall also perform all duties at any time during the term of said lease imposed by law upon the Manitoba Company, as owner of its said railways or either of the same.

ARTICLE VIII.

While the Northern Company shall continue to fulfill and comply with its obligations in this instrument contained, the Manitoba Company shall not, without the request or consent of the Northern Company, exercise its borrowing or guaranteeing powers, or take any action whereby the principal or interest charges of any bonds heretofore issued or guaranteed by it shall be increased.

ARTICLE IX.

The stockholders of the Manitoba Company having, at the said adjourned annual meeting, also adopted the following additional resolutions, to-wit:

"RESOLVED, That the directors or executive committee of this company be and they are hereby authorized to issue, as they may deem most expedient, either bonds secured by a general mortgage, or preferred or debenture stock, secured by mortgage or otherwise, or bonds in the nature and form of debenture stock, so secured, bearing interest or dividends not exceed five per cent per annum, payable semi-annually, to an amount not involving any greater interest charge than that for which this company now is or may become responsible, as principal

or guarantor, upon bonds heretofore issued, or which may hereafter, with the consent of the said leassee, be issued; such new bonds or stock, and the proceeds thereof, to be applied first to the retirement of outstanding bonds, and next to the construction and equipment of railways belonging to this company;

"RESOLVED, That the directors or executive committee of this company be and they are hereby authorized to take up, on behalf of this company, either by purchasing for cash or by exchanging for such new securities as they may issue under the foregoing resolutions, at such prices and on such terms as they may deem expedient, all bonds upon which this company is liable, either as principal or guarantor, to hold the same or to deposit them in trust with one or more trustees, under a suitable agreement for the protection of the rights of all parties, or to cancel them, whenever such cancellation may be deemed expedient and just to all parties; and that they be directed to retain an amount of such new securities sufficient for this purpose until all such bonds shall have been taken up;

"RESOLVED, That the directors or executive committee be authorized, if so requested by the Great Northern Railway Company, and in a manner to be approved by it, to provide for the extension, in the interest of this company or of the Great Northern Railway Company, of railways connecting with this Company's system, from some suitable point thereon in Montana, westward to or towards the Pacific coast, for such distance and over such route as the directors or executive committee may deem expedient, through the agency of some other company or companies, having the requisite powers to construct such extension; and for this purpose, in the name of this company, to guarantee payment of the principal and interest of bonds or other securities of such other companies, properly secured by First Mortgages upon their railways, to such amount and on such terms and conditions, as to the board or executive committee may seem expedient;

"RESOLVED, That the directors or executive committee be requested to provide, by the terms of the lease to the Great Northern Railway Company, that the capital stock of all corporations, the indebtedness of which may be guaranteed by this company, at the request of the Great Northern Railway Company, shall be deposited in trust, in like manner with the railway and steamboat stocks now owned by this company, and shall be held as security to this company for the performance of all the covenants of the lease;"

Nothing contained in this instrument shall be construed as revoking or limiting the powers intended to be conferred upon the board of directors and executive committee of the Manitoba Company, by said resolutions. Nothing contained in this instrument shall be construed as limiting the powers of the Manitoba Company to issue, at the request of the Northern Company, for the purpose of constructing one or more extensions of its railway system from a point or points on the same, or on the Montana Central Railway, in Montana, toward or to the Pacific coast, all such new and additional bonds or debenture stock, secured by lien upon the whole, or any part of its railways, or other property, as may be reasonably necessary for such purpose; such extensions when built, to be owned by the Manitoba Company, and to be subject to the lease contained in this instrument.

ARTICLE X.

The title to the said lands, granted to the Manitoba Company and its predecessors in interest by the State of Minnesota, as trustee of the United States, whether heretofore or hereafter conveyed to it, and also all outstanding contracts for sales heretofore made of portions of the same, which are subject to the liens and provisions of the Manitoba Company's said First Mortgage, and Consolidated Mortgage, shall be retained by the Manitoba Company, and shall by it be diligently and faithfully

cared for and administered; and the unsold lands be sold and the said contracts for sale be enforced, as rapidly as consistent with the interests of both the Manitoba and Northern Companies; and the proceeds of all such past and future sales, after deducting the reasonably necessary expenses of perfecting the title to such lands, and of caring for and administering the same, including all taxes or assessments, if any, that shall be levied on the same, in addition to the tax upon the gross earnings of the said leased railways, which gross earnings tax the Northern Company has, by this instrument, assumed and agreed to pay, and of performing any other duties with reference thereto, imposed by law, and of collecting the proceeds of such sales, shall be, by the Manitoba Company, faithfully applied to the following uses, to-wit:

First—To the redemption and retirement for cancellation of outstanding bonds secured by the Manitoba Company's said First Mortgage, in manner provided in and by said mortgage.

Second—To the redemption and retirement for cancellation of outstanding bonds secured by the Manitoba Company's said Consolidated Mortgage, in manner provided in and by said mortgage.

Third—To the redemption and retirement for cancellation, in order of priority, of any other outstanding bonds, or evidences of debt of the Manitoba Company, secured by lien upon the said lands in manner provided by such bonds, or other evidences of debt, or by the instrument creating the lien securing the same; and, in absence of such provisions, by purchase in the open market, or by tender.

Fourth—To the redemption and retirement for cancellation, in order of priority, of any other interest bearing bonds, or evidences of debt of the Manitoba Company secured by lien on the Manitoba Company's property, in manner herein provided; and, in absence of such provisions, by purchase in the open market, or by tender.

Fifth—To the retirement and cancellation of outstanding shares in the Manitoba Company's capital stock; such shares to be acquired by purchase in the open market, or by tender.

All such purchases of bonds or stocks for cancellation shall be made under such rules and regulations, and in such market, as shall seem most likely to insure the lowest prices and most favorable terms for the stocks and bonds to be purchased.

ARTICLE XI.

The Northern Company shall, from time to time, assign to the Manitoba Company, for its use during the term of this lease, free of rent, or other expense to the Manitoba Company, office room, properly heated and lighted, suitable for the transaction of its business, in the office building, in St. Paul, hereby leased to the Northern Company, or in such other building, in the same place, or elsewhere as the Northern Company shall at the time be occupying for the transaction of the business of the system of railways hereby leased.

The Northern Company shall also, at all times during the term of this lease, permit the officers of the Manitoba Company, and all agents appointed by it for the purpose, to have free access to all parts of the railways and all other property, hereby leased, including all stations, warehouses, machine shops, round houses, tool houses, and all other houses or buildings wherein are kept any of the equipment machinery or tools, hereby leased, or any equipment, machinery, or tools supplied by the Northern Company in substitution for or in replacement of those hereby leased, as provided in this instrument, for the purpose of examining into and ascertaining the condition of such leased property; and the Northern Company shall also secure for the Manitoba Company, and its agents appointed for that purpose, like opportunity for examining into and ascertaining the condition of the railways and other property of the said Minneapolis Union Railway Company, Eastern Railway Company of Minnesota,

Montana Central Railway Company, Willmar and Sioux Falls Railway Company, and Duluth, Watertown and Pacific Railway Company; and also for inspecting and examining the books, accounts, and corporate minutes and records of the last named companies.

And the Northern Company shall, during the term of this lease, permit all officers, agents and employes of the Manitoba Company, traveling upon the business of that company, to ride in the passenger trains of the Northern Company, free of charge, between any and all points on the system of railways hereby leased, and also between all points on any other railway operated by the Northern Company in connection with said system, at any time during the term of said lease, under such reasonable rules and regulations as the Northern Company shall see fit from time to time to adopt with reference to such transportation.

ARTICLE XII.

The Manitoba Company and the Saint Paul and Northern Pacific Railroad Company, having entered into sundry contracts for the conveyance, by the one to the other, of sundry parcels of ground, within the city of Saint Paul, nothing contained in this instrument shall prevent the carrying out of such contracts, by the making and receiving of the several conveyances contemplated by such contracts, as freely and effectually, in all particulars, as if this instrument had not been made.

The several parcels of ground to be conveyed to the Manitoba Company by the terms of the said contracts, shall, when and as the title thereto becomes vested in the Manitoba Company, become subject to the operation of this lease, and any balance of moneys accruing to the Manitoba Company, from such exchanges and transfers, shall be paid into the sinking fund of the mortgage or mortgages forming the paramount lien upon the grounds that had been the subject of such transactions.

ARTICLE XIII.

The Northern Company shall, during the term of this lease, at its own cost, faithfully protect the title of the Manitoba Company to all the property hereby leased, or intended to be; and, if, at any time during the term of this lease, any defect or imperfection should be made to appear in the title of the Manitoba Company to any grounds or lands acquired or held by that company, for right of way, stations, yards, or any other purpose, in connection with the railways hereby leased, or to any other item of the property hereby leased, or intended to be, such defect or imperfection shall, so far as may be found practicable, be supplied by the Northern Company, at its own cost; it not being the intent of this instrument that the Manitoba Company shall warrant the title to any of the property, rights, or franchises hereby leased or otherwise transferred, or so intended to be.

ARTICLE XIV.

In case at any time hereafter the Northern Company shall fail to make, in time and manner as in this instrument provided, any of the payments of money which by this instrument it has assumed to make, whether such payments are to be made directly to the Manitoba Company or to the holder of any bond, obligation or other form of indebtedness, for which the Manitoba Company or its property or franchises are, or shall be, or might become, liable, as principal, surety or guarantor; or shall fail to perform or fulfill, or to cause to be performed or fulfilled, any duty or obligation imposed by law upon the corporation owning or operating the lines of railway hereby leased or the railways of either of the other railway companies, control of whose affairs will be acquired by the Northern Company, through the transfer of their outstanding stock to the Trustee by this instrument, for failure to perform or fulfill which duty

or obligation the said railways, or any portion thereof, or any of their appurtenances or equipment, essential for the proper maintenance or operation thereof, or their franchises, would, or might, become liable to seizure or forfeiture, and such default shall continue for the period of six (6) months; or, in event of the Northern Company being or becoming in a state of declared insolvency, if such default shall continue for the period of sixty (60) days; or if, at any time during the term of the said lease, the Northern Company shall fail or refuse to maintain and operate, or to cause to be maintained and operated, either of the railways, and the equipment thereof, which by this instrument it has agreed to maintain and operate or to cause to be maintained and operated, in manner by this instrument provided; and such default shall continue after the expiration of a reasonable time for compliance with the valid final award of any board of arbitrators, constituted and acting in pursuance of Article XVI of this instrument, or with the final order or judgment of any court of competent jurisdiction, requiring the doing by the Northern Company of the act or acts, the omission to do which shall have constituted such default; in any and every such case the Manitoba Company may, at its option waive such default, or rescind the lease embodied in this instrument, and all the other provisions thereof, in favor of the Northern Company, save those making absolute and unconditional sales and transfers of securities to the Northern Company; and re-enter into and resume possession, control and ownership, freed from any rights of the Northern Company, or its assigns, or its creditors, of all railways, properties, stocks and securities of every description, coming within the operation of this instrument, save such as shall have been previously mortgaged or sold with assent of the Manitoba Company, as hereinbefore provided, and also save the stocks and securities absolutely and unconditionally sold and transferred to the Northern Company, as aforesaid, and, also, save the materials

in such temporary tracks and structures as may have been placed upon the grounds of the Manitoba Company by the Northern Company, and such portable equipment, tools and implements as may have been provided for use in connection with the leased railways, by the Northern Company, in pursuance of the requirements of this instrument, otherwise than as renewals of, or substitutes for, any of the same hereby leased; and the Trustee shall, in case of any such rescission lawfully made, upon request of the Manitoba Company, reassign and surrender to it all the stocks and certificates for stocks delivered or transferred to it, in pursuance of the provisions of this instrument, which shall not previously have been pledged, mortgaged, or sold with the assent of the Manitoba Company, as hereinbefore provided, together with all revenues therefrom, at the time in possession or under control of the Trustee; and all railways, properties, stocks and securities so repossessed by the Manitoba Company, together with all properties, stocks, and other securities at the time retained by it, subject to the provisions of this instrument, shall thenceforth be free and clear of any and all right and title of the Northern Company, or its assigns or creditors, derived from or through this instrument.

The remedies reserved to the Manitoba Company by this Article shall be treated as cumulative only, and shall not deprive that company of the right to resort to any other that shall at the time be afforded by the laws, nor of the right to use such other remedies at its pleasure, simultaneously and concurrently with the remedies afforded by this Article, or otherwise.

The rescission by the Manitoba Company of the said lease shall not excuse the Northern Company from the obligation to pay any sum of money which had become payable by it prior to the date of such rescission.

In event of there remaining upon the grounds hereby leased, or upon the grounds of either of the said railway companies, possession of whose stock shall have been resumed by the Mani-

toba Company, as above provided, at the time of any such rescission, re-entry or resumption of possession by the Manitoba Company, any permanent tracks, structures or other improvements, placed thereon by the Northern Company, for which it shall not have been previously paid, the same not having been provided in replacement of or in substitution for other tracks, structures or improvements existing on said property at the date hereof, the Manitoba Company shall pay the actual and fair value thereof, for use in connection with its said railway system, not, in any event, exceeding the actual original cost thereof to the Northern Company, with proper deductions for deterioration, if any there shall have been. Such payment shall be made:

Firstly—To the holder or holders of any lien or liens upon the leased property or upon the interest of the Northern Company in the same, or upon the property of said other companies, as the case may be, or upon any track, structure or other improvement situated thereon, for labor or materials furnished the Northern Company for maintaining, replacing or renewing the leased property, or the property of said other company, as the case may be, or for putting additional tracks, structures or other improvements thereon, to the amount of such liens; and

Secondly—To the Northern Company, to the extent of any residue remaining after payment of such liens.

The Manitoba Company shall, at its option, have a credit for all sums so to be paid, for a period not extending ten (10) years, with interest payable annually, at a rate not exceeding the average rate of interest upon its funded indebtedness at the time outstanding; and should it have no such indebtedness at the time outstanding, then at the average rate paid by other railroad companies in the same region, enjoying good credit, upon their funded indebtedness.

Any dispute arising between the parties interested, either

concerning the value to the Manitoba Company of such tracks, structures or other improvements, or as to the rate of interest upon deferred payments of the sum representing such value, shall be submitted to, and decided by, arbitrators, in manner provided by Article XVI of this instrument.

ARTICLE XV.

It is understood and mutually agreed, by and between the parties hereto, that the word "Trustee," when and as used in these presents, except where some other meaning is plainly indicated, is intended to refer to and describe, and shall be construed to mean, the corporation or corporations, or the person or persons, which or who, for the time being, shall be charged with the execution of the trusts of these presents whether the same shall be the party of the third part, or any successor or successors in said trust. And it is further mutually agreed, by and between the parties hereto, as a condition on which the party of the third part has assented, and does assent, to these presents, that the Trustee shall not in any manner be responsible or liable for any act, default or misconduct of any agent or agents by it employed; nor shall it be answerable, under any circumstances, except for its own wilful default or misconduct; and that the Trustee shall be entitled to just compensation for all services which it may hereafter render in said trust, to be paid from the trust funds which may come into its hands; or, in case of deficiency of the trust funds, by the Northern Company.

ARTICLE XVI.

It is further mutually covenanted and agreed, by and between the parties hereto, that any and all questions that shall or may arise touching the construction of this contract or any part thereof, or the rights of the parties thereunder, or covering the business, or manner or mode of transacting the business to be carried on under the provisions thereof, upon which the parties

cannot agree, shall be submitted to the arbitrament and award of a board of three (3) disinterested persons, experienced in railway management, one to be selected by the Manitoba Company, its successors or assigns, and one by the Northern Company, its successors or assigns. If either party shall refuse or neglect to appoint an arbitrator within twenty (20) days after written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party so giving such notice may, and shall, select and appoint a disinterested person, experienced in railway management, to act as arbitrator for, and on behalf of the party so notified and refusing or neglecting to appoint. The two thus appointed shall select a third, and the board so appointed shall hear and determine the matter in controversy, upon reasonable notice to both parties of the time and place of hearing, and the decision and award of said board, or of any two of them, in the premises, shall be binding and conclusive upon said parties, their successors and assigns, with respect to the matter submitted to and decided by them.

ARTICLE XVII.

It is further mutually covenanted and agreed, by and between the parties hereto, that any difference or controversy that may in good faith arise between the parties hereto, as to the construction or carrying out of this contract, or the rights of the parties thereunder, or the transaction of business under the provisions thereof, shall not interrupt the performance of the contract or the continuance of business thereunder; but such business shall continue to be transacted, and settlements and payments made thereunder, in the same manner in which the same had been transacted and made prior to the arising of such difference or controversy; and thereupon such payments or restitutions shall be made by the respective parties as may be required by the decision of the arbitrators.

ARTICLE XVIII.

At the expiration of the full term of the said lease, if the Northern Company shall, in the meantime, have well and faithfully fulfilled and performed its covenants, promises and obligations contained in this instrument; or, at that time shall not be in default in respect to any of the same; all and singular the said stocks vetsed in the Trustee by virtue of this instrument, or retained by the Manitoba Company, as hereinbefore provided, shall be delivered up, and transferred to it, the Northern Company, freed from any of the trusts created by this instrument, but subject to any liens at the time existing thereon in favor of any party or parties other than the Manitoba Company.

ARTICLE XIX.

The provisions of this instrument shall be binding upon, and inure to the benefit of, the successors and assigns of the Manitoba and Northern Companies, respectively.

IN TESTIMONY WHEREOF, The said parties of the first part and second part have caused their respective corporate seals to be hereto affixed, and these presents to be signed by their respective presidents, or vice presidents, and secretaries; and the said party of the third part, to evidence its acceptance of the said trusts, and for no other purposes, has likewise caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and secretary; on this first day of February, A. D. 1890.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,

By

President.

In presence of

Attest:

Secretary.

THE GREAT NORTHERN RAILWAY COMPANY,
By .
President.

In presence of

Attest:
Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,
By
President.

In presence of

Attest:
Secretary.

STATE OF.....
County of..... ss.

On this.....day of.....A. D. 1890, before me, a notary public in and for said county and state, personally came.....to me personally known, and he being by me duly sworn, did depose and say, that he is the president of The Saint Paul, Minneapolis and Manitoba Railway Company, the corporation described in the foregoing instrument as the party of the first part thereto; that the seal affixed to said instrument as the corporate seal of said company is such corporate seal, and was affixed thereto by authority of said company and its board of directors and that he subscribed the said instrument, as president of said company, by like authority. And the said.....president as aforesaid, to me well known to be such president, acknowledged the execution of the said instrument as the free act and deed of said company, and that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my notarial seal the day and year above in this certificate written.

.....,
Notary Public.

STATE OF .....
County of..... ss.

On this.....day of.....A. D. 1890, before me, a notary public in and for said county and state, personally came.....to me personally known, and he being by me duly sworn, did depose and say, that he is the secretary of The Saint Paul, Minneapolis and Manitoba Railway Company, the corporation described in the foregoing instrument as the party of the first part thereto; that the seal affixed to said instrument as the corporate seal of said company is such corporate seal, and was affixed thereto by authority of said company and its board of directors, and that he subscribed the said instrument, as secretary of said company, by like authority. And the said .....secretary as aforesaid, to me well known to be such secretary, acknowledged the execution of the said instrument as the free act and deed of said company, and that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my notarial seal, the day and year above in this certificate written.

.....,
Notary Public.

STATE OF .....
County of..... ss.

On this.....day of....., A. D. 1890, before me, a notary public in and for said county and state, personally came....., to me personally known, and he being by me duly sworn, did depose and say, that he is the vice president of the Great Northern Railway Company, the corporation described in the foregoing instrument as the party of the second part thereto; that the seal affixed to

said instrument as the corporate seal of said company is such corporate seal, and was affixed thereto by authority of said company and its board of directors, and that he subscribed the said instrument, as vice president of said company, by like authority. And the said ....., vice-president as aforesaid to me well known to be such vice president, acknowledged the execution of the said instrument as the free act and deed of said company, and that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my notarial seal the day and year above in this certificate written.

.....,
Notary Public.

STATE OF .....
County of..... ss.

On this.....day of....., A. D. 1890, before me, a notary public in and for said county and state, personally came....., to me personally known, and he being by me duly sworn, did depose and say, that he is the secretary of the Great Northern Railway Company, the corporation described in the froegoing instrument as the party of the second part thereto; that the seal affixed to said instrument as the corporate seal of said company is such corporate seal, and was affixed by authority of said company and its board of directors, and that he subscribed the said instrument, as secretary of said company by like authority. And the said.....secretary as aforesaid, to me well known to be such secretary, acknowledged the execution of the said instrument as the free act and deed of said company, and that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my notarial seal the day and year above in this certificate written.

.....,

Notary Public.

STATE OF NEW YORK,
City and County of New York. ss.

On this.....day of.....A. D. 1890, before me, a notary public in and for said city, county and state, residing in said city, personally came..... and.....both to me personally known, and they being by me duly sworn, did each depose and say, that the said.....is the president, and the said .....is the secretary, of the Central Trust Company of New York, the corporation described in the foregoing instrument as the party of the third part thereto; that the seal affixed to said instrument as the corporate seal of said company is such corporate seal, and was affixed thereto by authority of said company and its board of directors, and that they respectively subscribed the said instrument, the former as president, and the latter as secretary, of said company, by like authority; and the said....., president, and .....secretary, as aforesaid, to me well known to be such president and secretary, acknowledged the execution of the said instrument as the free act and deed of said company, and that said company executed the same for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my notarial seal the day and year above in this certificate written.

.....,

Notary Public.
City, County and State of New York.

Thereafter counsel for Complainants introduced Complainants' Ex. 66-Drew, entitled "Abstract of Deeds given by the following named companies to the Great Northern Railway Company," which said exhibit is as follows:

ABSTRACT OF DEEDS

Given by the following named Companies to the Great Northern Railway Company.

Date	Grantor Company	Consideration	Bonds Assumed
1907			
July 1	Minnesota & Great Northern Ry. Co.	$ 1,000.00	
do	Dakota & Great Northern Ry. Co...	2,000,000.00	
do	Montana & Great Northern Ry. Co..	7,000,000.00	
do	Billings & Northern R. R.....	1.00**	
do	Eastern Ry. Co. of Minnesota.....	16,783,545.04	$9,700,000.00
do	Park Rapids & Leech Lake Ry. Co..	512,817.20	500,000.00
do	Minneapolis Union Ry. Co.....	808,607.16	2,800,000.00
do	Duluth, Watertown & Pacific Ry. Co.	893,913.48	1,375,000.00
do	Willmar & Sioux Falls Ry. Co.....	7,327,904.23	3,646,000.00
do	Montana Central Ry. Co.....	6,135,454.11	10,000,000.00
do	Spokane Falls & Northern Ry. Co..	3,862,865.53	2,812,000.00
do	Columbia & Red Mountain Ry. Co...	264,400.00	291,000.00
do	Washington & Great Nor. Ry. Co..	2,346,718.30	
do	Seattle & Montana R. R. Co.....	14,002,770.31	
Oct. 11	St. Paul, Minneapolis & Manitoba Ry. Co.....	35,000,000.00	*106,353,909.09
	Total	$96,939,995.36	$137,477,909.09

** Not included in total, being nominal.

* Includes $11,502,000 Montana Extension bonds deposited with Trustees, St. P. M. & M. Ry. Co. Pacific Extension mortgage. The Great Northern Ry. Co. will be called upon to pay the principal of or interest on these bonds only in case of default in the payment of the interest on or principal of the St. P. M. & M. Ry. Co., Pacific Extension bonds also assumed.

Note:—

By the terms of each of said deeds, all physical property, contract rights, stocks and securities and all property of every kind was conveyed to the Great Northern Railway Company; in like manner, the Great Northern Railway Company assumed bonds as above indicated, also all contract obligations and assumed and agreed to pay any and all indebtedness and liabilities of the grantor company.

The amount of said liabilities is not included in the above figures.

And thereupon counsel for Complainants also introduced Complainants' Ex. 67-Drew, entitled "Statement of the Average Market Value of Stock and Bonds of the Great Northern Railway and Proprietary Companies outstanding for the period of five years ended June 30, 1908." Said Ex. 67 is as follows:

THE GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF THE AVERAGE MARKET VALUE OF STOCK AND BONDS OF THE GREAT NORTHERN RAILWAY COMPANY (AND PROPRIETARY COMPANIES) OUTSTANDING FOR PERIOD OF FIVE YEARS ENDED JUNE 30TH, 1908, AND VALUES THUS OBTAINED APPLIED TO AVERAGE MILEAGE DURING SAID PERIOD; ALSO TO ACTUAL MILEAGE JUNE 30TH, 1908.

Name of Security	Average Amount Outstanding	Average Price	Valuation
Capital Stock	$152,000,000.00	$216.2448	$328,692,096.00
Subscription Receipts	12,000,000.00	119.7677	14,372,124.00
St. P. M. & M. Ry. Bonds			
2nd Mortgage	6,448,800.00	107.4048	6,926,320.74
Dakota Extension	4,906,000.00	108.6524	5,330,486.74
Consolidated Mortgage 6%	13,344,000.00	131.7732	17,583,815.80
do 4½%	19,495,600.00	109.2450	21,297,968.22
Montana Extension	10,185,000.00	101.0888	10,295,894.28
Pacific Extension	18,424,242.42	100.	18,424,242.42

Eastern Ry. of Minnesota Bonds			
First Division 1st Mortgage....	3,774,600.00	102.3766	3,864,307.14
Northern Division.....	5,512,400.00	100.	5,512,400.00
Montana Central Ry. Bonds			
First Mortgage 6%.....	6,000,000.00	132.8292	7,969,752.00
do 5%.....	4,000,000.00	114.7987	4,591,948.00
Minneapolis Union Ry. Bonds			
First Mortgage 6%.....	2,150,000.00	104.7	2,251,050.00
do 5%.....	650,000.00	100.	650,000.00
Willmar & Sioux Falls Ry. Bonds			
First Mortgage.....	3,641,800.00	111.3625	4,055,599.52
Minneapolis Western Ry. Bonds			
First Mortgage.....	500,000.00	100.	500,000.00
Spokane Falls & Northern Ry. Bonds			
First Mortgage.....	45,800.00	100.	45,800.00
	$263,078,242.42		$452,363,804.86

Average Miles of Railway entire line during said period, 6,021.846.

Average Miles of Railway in Minnesota during said period, 2,037.524; equal to 33.835%.

33.835% of average market value of $452,363,804.86=$152,857,293.37, average market value in Minnesota.

Miles of Railway, June 30th, 1908, 6,687.98.

Miles of Railway in Minnesota, June 30, 1908, 2,056.07 equal to 30.74%.

30.74% of average market value of $452,363,804.86=$139,056,633.67.

Note:—

The "average amount outstanding" is arrived at by taking the total amount of each security outstanding June 30th, 1904, 1905, 1906, 1907 and 1908, adding them together and dividing the total by five.

The "Average price" is taken from the Financial Review published by William B. Dana Company, New York, publishers of the Commercial and Financial Chronicle. In case of bonds where no quotations are shown during the fiscal year, the same are considered at par.

Witnesses for Complainants.

Doddridge, William B:

Direct examination 1143

Cross-examination 1153

Drew, John G:

Direct examination 1910

Complainants' Exhibit 57, Drew,

(Printed with testimony.) 1920

Cross-examination 1960

Complainants' Exhibit 66, Drew..... 2093

Elwood, Lester B:

Direct examination 554

Complainants' Exhibit 14, Elwood 558

" Exhibit 14-A, Elwood 558

" Exhibit 15, Elwood 561

Cross-examination 573

Emerson, George H.:

Direct examination 943

Cross-examination 953

Hayden, Charles:

Direct examination 162

Complainants' Exhibit 9, Hayden 173

" Exhibit 10, Hayden 176

Cross-examination 183

Re-direct examination 303

Re-cross examination 341

Hill, James J.:

Direct examination 1232

Cross-examination 1325

Re-direct examination 1353

Hogeland, Albert H.:

Direct examination 2

Complainants' Exhibit 1 Hogeland 10

" Exhibit 2, Hogeland 11

" Exhibit 3, Hogeland 15

" Exhibit 4, Hogeland 19

" Exhibit 5, Hogeland 21

" Exhibit 6, Hogeland 24

" Exhibit 7, Hogeland 56

" Exhibit 8, Hogeland 60

Recalled 990

Complainants' Exhibit 50, Hogeland 992

" Exhibit 51, Hogeland 994

" Exhibit 4, Hogeland, corrected. 1000

" Exhibit 52-A, Hogeland 1003

" Exhibit 52-B, Hogeland 1003

Re-cross examination 1010

Re-direct examination 1066

Recalled 1557

Complainants' Second Amended Ex. 4-Hogeland 1593

" Ex. 6 Corrected, Hogeland..... 1614

" Ex. 7 Corrected, Hogeland..... 1616

" Exhibit 55 Hogeland 1617

" Exhibit 56, Hogeland 1624

Cross-examination 1634

Re-direct examination 1698

Re-cross examination 1719

Maguire, Aubrey G.:

Direct examination 789

Complainants' Exhibit 39, Maguire 790

" Exhibit 40, Maguire 800

" Exhibit 41, Maguire 804

" Exhibit 42, Maguire 811

" Exhibit 43, Maguire 813

" Exhibit 44, Maguire 819

Cross-examination 820

Re-direct examination 883

Complainants' Exhibit 45, Maguire 888

" Exhibit 46, Maguire 890

Re-cross examination 900

Defendants' Exhibit A, Maguire 943

Martin, George R.:

Direct examination 955

Complainants' Exhibit 47, Martin 955

" Exhibit 48, Martin 987

" Exhibit 49, Martin 987

McPherson, Chester J.:

Direct examination 1172

Cross-examination 1191

Parker, Frederick N.:

Direct examination 620

Complainants' Exhibit 18, Parker 620

" Exhibit 19, Parker 622

" Exhibit 20, Parker 624

" Exhibit 21, Parker 625

" Exhibit 22, Parker 639
" Exhibit 23, Parker 639
" Exhibit 24, Parker 641
" Exhibit 25, Parker 641
" Exhibit 26, Parker 642
" Exhibit 27, Parker 643
" Exhibit 28, Parker 644
" Exhibit 29, Parker 649
" Exhibit 30, Parker 652
" Exhibit 31, Parker 653
" Exhibit 32, Parker 654
" Exhibit 33, Parker 658
" Exhibit 34, Parker 658

Cross-examination 662

Re-direct examination 729
Complainants' Exhibit 35, Parker 733
Re-cross examination 738

Recalled 1133
Complainants' Exhibit 54, Parker 1133
Cross-examination 1138

Recalled 1735
Complainants' Exhibit 57, Parker 1735
" Exhibit 58, Parker 1736
" Exhibit 59, Parker 1737
" Exhibit 60, Parker 1737
" Exhibit 61, Parker 1739
" Exhibit 62, Parker 1739
" Exhibit 63, Parker 1741
" Exhibit 64, Parker 1741

Cross-examination 1743

Read, William C.:
Direct examination 602
Cross-examination 610
Re-direct examination 616

Stevens, John F.:
Direct examination 408
Cross-examination 464
Complainants' Exhibit 13, Hogeland 485
Re-direct examination 546
Re-cross examination 551

Stryker, John D.:
Direct examination 592
Complainants' Exhibit 16, Stryker 594
" Exhibit 17, Stryker 595
Cross-examination 600

Taylor, Oscar L.:
Direct examination 359
Complainants' Exhibit 11, Taylor 365
" Exhibit 12, Taylor 372
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Re-direct examination 398
Re-cross examination 403

Tilton, Clyde W.:
Direct examination 751
Complainants' Exhibit 36, Tilton 751
" Exhibit 37, Tilton 758

" Exhibit 38, Tilton 759
" Exhibit 39, Tilton 771
Cross-examination 775
Recalled 1141
Cross-examination 1141

Ward, Frank E.:
Direct examination 1078
Complainants' Exhibit 53, Ward 1079
Cross-examination 1096
Re-direct examination 1131

Watson, John J.:
Direct examination 617

WITNESSES FOR DEFENDANTS.

Morgan, Dwight C.:

Direct examination 1354

Defendants' Exhibit C, Morgan 1355

" Exhibit C-1, Morgan 1361

" Exhibit C-2, Morgan 1363

" Exhibit C-3, Morgan 1364

" Exhibit C-4, Morgan 1365

" Exhibit C-5 Morgan 1366

" Exhibit C-6, Morgan 1367

" Exhibit C-7, Morgan 1367

" Exhibit C-8, Morgan 1369

" Exhibit C-9, Morgan 1371

" Exhibit C-10, Morgan 1373

" Exhibit C-11, Morgan 1374

" Exhibit C-12, Morgan 1375

" Exhibit C-13, Morgan 1378

" Exhibit C-14 Morgan 1378

" Exhibit C-15, Morgan 1380

" Exhibit D, Morgan 1382

" Exhibit E, Morgan 1382

" Exhibit F, Morgan 1407

Cross-examination 1423

Re-direct examination 1475

Hillman, Conway W.:

Direct examination 1476

Defendants' Exhibit G, Hillman, Table No. 1... 1477

" Exhibit G, Hillman, Table No. 2... 1478

" Exhibit G, Hillman, Table No. 3... 1491

" Exhibit G, Hillman, Table No. 3-B. 1492
" Exhibit G, Hillman, Table No. 4... 1504
" Exhibit G, Hillman, Table No. 5... 1505
" Exhibit G, Hillman, Table No. 6... 1507
" Exhibit G, Hillman, Table No. 7... 1521
" Exhibit G, Hillman, Table No. 8... 1522
" Exhibit G, Hillman, Table No. 9... 1523
" Exhibit G, Hillman, Table No. 10.. 1535
" Exhibit G, Hillman, Table No. 11.. 1538
" Exhibit G, Hillman, Table No. 12.. 1547
" Exhibit G, Hillman, Table No. 13.. 1550
" Exhibit H, Hillman..... 1531
" Exhibit I, Hillman 1753
" Exhibit J, Hillman 1753

Recalled 1764
Defendants' Exhibit K-1, Hillman 1770
" Exhibit K-2, Hillman 1788
" Exhibit K-3, Hillman 1819
" Exhibit K-4, Hillman 1826
" Exhibit K-5, Hillman 1837
" Exhibit K-6, Hillman 1840
" Exhibit K-7, Hillman 1841
" Exhibit K-8, Hillman .....
" Exhibit K-9, Hillman 1861
Cross-examination 1885
Re-direct examination 1904
Recalled 2005